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## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 17 October 2005

# Journal des débats (Hansard)

Lundi 17 octobre 2005

**Standing committee on  
general government**

Gasoline Prices

**Comité permanent des  
affaires gouvernementales**

Prix d'essence

Chair: Linda Jeffrey  
Clerk: Tonia Grannum

Présidente : Linda Jeffrey  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 17 October 2005

Lundi 17 octobre 2005

*The committee met at 1555 in room 151.*

## GASOLINE PRICES

Consideration of the designated matter pursuant to standing order 124 relating to gasoline price spikes.

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. We're here today to debate the notice of motion filed by Marilyn Churley, MPP, pursuant to standing order 124.

As per past practices, I suggest the committee split the 30-minute allotted debate time under standing order 124 equally among the three caucuses and that each caucus may use their 10 minutes as they see fit. Is there agreement among committee? Agreed.

Ms. Churley, you can move your motion and you'll have 10 minutes to speak.

**Ms. Marilyn Churley (Toronto-Danforth):** Thank you very much. Mr. Bisson will be using the New Democratic time on this.

I move that the committee initiate a study into the industry factors that led to price spikes in late August and September, as well as into the possible actions the Ontario government can take to protect Ontarians from similar price spikes in the future.

The issues under examination by the committee would include but not be restricted to:

—What are the determinants of the retail price of gasoline in Ontario?

—In looking at the complex factors that lead to volatility in the price of gasoline, what areas does the federal government have responsibility for and what areas do provincial governments have responsibility for?

—Are there short-, medium- or even long-term variations in gas prices across Ontario that cannot be justified by transportation costs and other costs directly related to the costs of retailing gasoline in rural, northern and other remote areas of Ontario?

—Does adequate competition exist at the retail level in all parts of Ontario, including rural and northern Ontario?

—What are the short-, medium- and long-term trends in terms of the relative retail role played by the majors as opposed to the independents?

—Does adequate competition exist at the wholesale level, particularly with respect to price competition, or lack thereof, in the refinery sector?

—Particularly with regard to price spikes in late August and September, were price spikes at the retail level justified by movements in the price of crude oil, or did certain players in the system take advantage of hurricane-related uncertainty to increase gas prices unjustifiably?

—What legislation and other mechanisms are other provinces and US states employing to deal with regional retail gas price variations and price spikes such as those that occurred in late August and September?

—What are the pros and cons of the different measures employed by other provinces and US states, and how applicable would they be to Ontario?

**The Chair:** You have eight minutes remaining. Do you wish to use—

**Ms. Churley:** Ten minutes.

**The Chair:** Oh, sorry. You now have 10 minutes.

**Ms. Churley:** I'll turn the chair over to Mr. Bisson, our lead on this issue.

**Mr. Gilles Bisson (Timmins-James Bay):** It's fairly clear—and I don't want to use all my time, because I'd like to hear what the government has to say—that post-Katrina, we had ourselves a situation where the price of gas went up. It went up exorbitantly high, as much as \$1.50 a litre at one point.

We know that the province has a fair amount of capacity as far as its regulatory powers when it comes to electricity, energy and gas. We know that when it comes to the federal government's capacity, basically the only authority they really have is in regard to collusion if you were able to prove criminal intent. Everything else having to do with how much refinery capacity is available, looking at basically the retail competition side—is there a sufficient amount of competition on the retail side; is there a sufficient amount of competition on the wholesale side?—those are all issues that are under provincial jurisdiction and provincial purview, as well as the whole issue of price differentials.

We all know, especially those of us who represent mixed rural-urban ridings, that you have huge price differentials within a very small geographic area. For example, in the town of Kapuskasing, you can be paying \$1.25 a litre today, but drive down to Smooth Rock Falls and find it for \$1.15. Why is there a 10-cent-a-litre difference when you're less than 130 or 140 kilometres apart? Certainly, it doesn't cost that to transport the gas.



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We would ask the committee to vote in favour of this motion so that we can have a reasonable amount of time. I wouldn't argue for a minute that we drag this out for a long, long period of time, but I think we should look at those issues that are under our control and determine what the effects are—Was there price collusion? What are the effects? What can we do?—and then come back, hopefully, with some recommendations.

**The Chair:** Thank you, Mr. Bisson. Do you wish to use the remaining time?

**Mr. Bisson:** No, I'll use it after theirs.

**The Chair:** OK. The government has 10 minutes to speak on this issue.

**Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell):** We recognize that Minister Phillips has already sent a letter to the federal Competition Bureau on this around September 20. He has received an answer to that letter, but at the present time we recognize—we have some doubt also—that the prices between service stations are not—

**Mr. Lou Rinaldi (Northumberland):** Consistent.

**Mr. Lalonde:** Consistent, yes. So at the present time I have to say, yes, our government has taken steps already to make sure that the competition is done properly and not what we see from one area to the other. I drive a lot in the riding, and I agree that, for me, in a location like Alfred the price of gas could be \$1.05, and down in Rockland, which is only about 35 kilometres away, it's 95 cents, and you're talking about the same gas company. That is all I would say at the present time.

**The Chair:** Are there any further speakers on the government side?

Seeing none, Mr. Bisson.

**Mr. Bisson:** I have a very quick question. Are you in favour of the motion? That would be my question. Are you prepared to have the committee look at this?

**Mr. Lalonde:** We agree with the motion, yes.

**Mr. Bisson:** OK. So you'll be voting in favour. I look forward to what I think will be some good hearings. I think there are some issues that we need to turn our attention to, and Mr. Lalonde touched on them. We all understand that the price of gas is tied to what happens in world events, to a large degree. However, people really get irked when they see they're paying 95 cents in this community, but if they go 15 miles down the road they're paying \$1.05 or \$1.10, and sometimes within their own community. That's one issue.

The other thing that I found as I was touring across the province this fall and this summer on this issue is that

there is a real lack of competition in the system. I think that's one of the big problems I see. If you're going to have, and I believe you should have, a private-sector-run gas industry—I don't believe that the government should run the retail sector, but you have to have good competition. Without good competition, you're not able to drive the prices down.

One of the things that we saw, especially from the independents, is that they have lost a large part of their ability to buy gas on the spot market or buy gas from other suppliers that bring it into a local market to drive the price down. They're basically all buying from the same people.

I think those are some of the issues that we can take a look at with this committee. I look forward to this work, and I thank the government for having supported our motion.

**The Chair:** Are there any further speakers?

**Mr. Lalonde:** I am in agreement with Mr. Bisson at the present time, because I did stop at the service station and ask them how come the company here, at MacEwen, has a certain price, and I go about five kilometres away and the price has changed. The answer that I got from the service station operator was, "While within a seven-mile radius, if the price changes at the other end, we get a phone call to change our price." I went back to see them and I said, "Have you filled up your tank since last night?" "No, it's the same gas." I went a little further. I said to the gentleman, "I was driving by this morning to go to Tim Hortons. I came back—different price. I went to my office, came back, and there was another price. How many times have you changed your price today?" He went to his book and said, "I've changed the price eight times today." So really, something has to be done.

**Mr. Bisson:** Eight is enough—well, not for the NDP, it isn't.

**The Chair:** Mr. Lalonde, are you finished?

**Mr. Lalonde:** Yes, I'm through.

**The Chair:** Mr. Bisson, did you—

**Mr. Bisson:** They're voting in favour, so let's get on to the vote.

**The Chair:** OK. Seeing that there are no further speakers, that concludes the allotted debate time that people want to use under standing order 124. I'm now required to put the question on the motion.

All those in favour of the motion? That's unanimous.

Thank you, to the members of the committee. We're adjourned. Could the members of the subcommittee stay? We need to discuss some subcommittee business.

*The committee adjourned at 1605.*













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Lundi 14 novembre 2005

**Standing committee on  
general government**

Ontario Municipal Employees  
Retirement System Act, 2005

**Comité permanent des  
affaires gouvernementales**

Loi de 2005 sur le régime de  
retraite des employés municipaux  
de l'Ontario



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STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 14 November 2005

Lundi 14 novembre 2005

*The committee met at 1601 in room 151.*ONTARIO MUNICIPAL EMPLOYEES  
RETIREMENT SYSTEM ACT, 2005LOI DE 2005  
SUR LE RÉGIME DE RETRAITE  
DES EMPLOYÉS MUNICIPAUX  
DE L'ONTARIO

Consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act /  
Projet de loi 206, Loi révisant la Loi sur le régime de retraite des employés municipaux de l'Ontario.

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. For the people who are standing at the back of the room, we're trying to create another space for over-flow so you won't be standing as long. I hope you'll be patient while we arrange that for you.

We're here today for the purpose of commencing public hearings on Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act.

## SUBCOMMITTEE REPORT

**The Chair:** The first item of business on our agenda is the report of the subcommittee on committee business. May I ask someone to move the report of the subcommittee and read it into the record.

**Ms. Deborah Matthews (London North Centre):** I move the adoption of the report of the subcommittee.

Your subcommittee met on Monday, October 17, 2005, to consider the method of proceeding on Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act, and recommends the following :

(1) That the committee meet for the purpose of public hearings on Bill 206 on November 14, 16 and 21, 2005, and only on November 23, 2005, if needed, in Toronto at Queen's Park.

(2) That the committee meet from 4 p.m. to 6 p.m., subject to change and witness demand.

(3) That an advertisement be placed in all English dailies and the one French daily for one day, November 1, 2005, and that an advertisement also be placed on the OntParl channel and the Legislative Assembly Web site.

(4) That the deadline for those who wish to make oral presentations on Bill 206 be 5 p.m. on November 9, 2005.

(5) That all groups be offered 20 minutes in which to make their presentations and individuals be offered 10 minutes in which to make their presentations.

(6) That the clerk, in consultation with the Chair, be authorized to schedule all witnesses.

(7) That if all witnesses cannot be accommodated, the clerk provide the subcommittee members with the list of witnesses who have requested to appear, by 6 p.m. on November 9, 2005, and that the caucuses provide the clerk with a prioritized list of witnesses to be scheduled, by 12 p.m. on November 10, 2005.

(8) That the Minister of Municipal Affairs and Housing be invited to make a 15-minute presentation before the committee on November 14, 2005, followed by a five-minute question/comment period from each of the three parties, followed by a 15-minute technical briefing by ministry staff, followed by a further five-minute question/comment period from each of the three parties.

(9) That the deadline for written submissions on Bill 206 be 6 p.m. on November 24, 2005.

(10) That, in order to facilitate the committee's work during clause-by-clause consideration of the bill, when time permits, proposed amendments shall be filed with the clerk of the committee by 2 p.m. on November 25, 2005.

(11) That the committee meet for the purpose of clause-by-clause consideration of Bill 206 on November 28 and 30, 2005, in Toronto at Queen's Park.

(12) That the research officer provide the committee with background information on Bill 206 prior to the start of public hearings, and that the research officer also provide the committee with a summary of witness presentations prior to clause-by-clause consideration of the bill.

(13) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair:** Are there any questions or comments on the report of the subcommittee? Seeing none, all in favour? All those opposed? That's carried. The report of the subcommittee is carried.



MINISTRY OF MUNICIPAL AFFAIRS  
AND HOUSING

**The Chair:** As agreed to in the subcommittee, we invited the Minister of Municipal Affairs and Housing to be here to make a presentation. Welcome, Minister. We're glad you're here. As requested, you have 15 minutes to make your presentation.

**Hon. John Gerretsen (Minister of Municipal Affairs and Housing):** Thank you very much, Madam Chair. It's good to be here. I'm joined here today by Dana Richardson, who is the ADM for local government, and Janet Hope, the director of the municipal finance branch within the Ministry of Municipal Affairs and Housing.

On June 1, I introduced for first reading Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act. It's my pleasure to now bring this bill to this committee. If passed, our legislation will enable OMERS stakeholders to determine for themselves what is best for their future.

OMERS was established in 1962 as the pension plan for employees of local governments in Ontario. Today, OMERS is the pension plan for about 355,000 current and former employees. They are from a diverse range of about 900 employers, which include municipal governments, school boards, police service boards, children's aid societies and other local agencies throughout Ontario. The plan members are represented by about 50 different unions. OMERS manages approximately \$39 billion in assets.

At this time, I'd like to share with you the government's intentions regarding the bill and the legislative process that we're currently engaged in.

The bill, if passed, will devolve governance responsibilities from the province and, instead, place responsibility for the plan with those who pay for it, who pay into it and who benefit from it. We believe that devolving the responsibility of OMERS governance will place greater authority in the hands of the contributors.

OMERS remains the only pension plan where the province plays the sponsor's role without being a direct contributor to the plan.

Over the last two years, our government has built a new relationship with our municipal partners, one that acknowledges their expertise and fosters municipal autonomy. This bill is another example of how we are providing municipalities, along with other members of the municipal sector, an opportunity to make their own decisions in areas that impact them. Our government wishes to strengthen local autonomy and improve the operations of OMERS for the benefit of the pension plan members and for the plan's continued fiscal sustainability, and this bill does just that. In response to requests over the years by stakeholders, this bill, if passed, will give the members control over their own plan.

Bill 206 also builds on the recommendations made in a report from the OMERS board in 2002. The board's report suggests a general path to devolve sponsorship

from the government to stakeholders that was based on broad input from representatives of both employee and employer groups.

This bill also addresses a commitment made by Premier McGuinty, while Leader of the Opposition, in response to that report, and addresses several issues that remain outstanding in the report.

The key features of the bill include the following: a single base plan with potential supplemental benefit plans for those in the police and fire sectors and for all other employees who contribute to OMERS; a sponsors corporation with subcommittees providing advice on the design of the supplemental plans; an administration corporation to continue the fiduciary role of the current OMERS board; raising the accrual rate cap to 2.33% for public safety employees to reflect changes made recently to the federal Income Tax Act; access to supplemental plan benefits offered by the sponsors corporation through local decision-making; and a proposed sponsors corporation disputes resolution mechanism similar to that used by the Ontario teachers' pension plan, with mandatory mediation before arbitration.

I'm also pleased to note that the bill provides that OMERS would continue to be the exclusive provider of pension products for the municipal sector.

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At this time, I would like to summarize some of the key events that have taken place between the time the legislation was introduced and these hearings. Ministry staff conducted technical briefings for stakeholders so that they would have a clear understanding of the draft bill and would have time to productively discuss this issue within their respective organizations. The proposed legislation has been a feature topic of discussion at the AMO annual conference and also at regional municipal conferences. In addition, OMERS themselves held a stakeholder meeting on Bill 206 where they shared information that assisted employers and employees with determining the potential costs of sample supplemental benefits.

Our government is committed to hearing stakeholders' views and taking those views into account. These very hearings are proof of our commitment. We are holding hearings after first reading so that we can get immediate comment and input into this bill. These hearings will add to the good comments we have received to date and will provide a further opportunity to hear from the various individuals who want to make presentations. We welcome their suggestions.

Let me turn for a few minutes to discuss what the stakeholders have brought to my attention up to now. Over the last couple of months, I have received a number of carefully considered submissions from stakeholders that truly reflect the importance these groups give to their pension plans. A number of these stakeholders have also taken the time to set up meetings with my parliamentary assistant, Brad Duguid, or with staff from my office to let the government know how they feel about the governance of their pension plan. Also, the police and fire



unions suggested that employee and employer groups meet informally to talk about potential supplemental benefit plans. With the exception of the city of Toronto, employers did not participate in this opportunity.

Overall, the comments that we have received reflect the full spectrum of groups that this legislation will impact: municipalities and their associations; representatives of firefighters, police, retirees, unions, and various associations; as well as the OMERS board. I'm pleased to have had a chance to hear from all of these groups in advance of the hearings. In all cases, we have encouraged groups to provide their input to this committee, and I suspect that you'll be hearing from many of the same groups, and more, over the course of the hearings.

What is quite clear is that various OMERS stakeholders have different views on many matters relating to the bill. We are pleased that these hearings are being held, and that there will be an opportunity for full input. We expect and encourage debate on this legislation.

I thank you for the opportunity to speak to you today. I too look forward to the deputations of stakeholders as we work toward providing a secure framework for OMERS that continues fiscal sustainability in the plan and provides competitive pensions and benefits for those in the municipal sector. Those are my opening comments.

**The Chair:** Thank you, Minister. Did you want to invite any other staff up to you during the times that the parties would like to ask questions?

**Hon. Mr. Gerretsen:** I have two very competent ministry people here with me. I understand that they will be giving a further technical briefing after we're through in this portion of the hearings.

**The Chair:** Yes. Just for the audience's knowledge, for those who are standing, committee room 1 has been set up for overflow. You'll be able to hear and see what's going on in this meeting, so should you want to sit down during the course of the next two hours, that's the place where you would go: committee room 1, which is, as you step out the door, to the right and down the hallway.

As agreed to by subcommittee, this time has been allotted for questions and comments from all three parties. There are five minutes for each party, beginning with Mr. Hardeman.

**Mr. Ernie Hardeman (Oxford):** Thank you, Minister, for your presentation. First of all, I want to say thank you, as we've discussed many times before, for bringing this bill to public hearings after first reading rather than after it has been almost cast in stone. This gives an opportunity for everyone's voice to be heard, and the legislation to reflect the views of the majority of the population.

As you mentioned, there have been a lot of comments made about this bill. After I reviewed some of the written presentations that have come forward for this committee hearing, if you've done the amount of consultation that you just suggested, I'm surprised we're even proceeding this far with it, because there seems to be very little support for what's being proposed here in the general

comments that have come forward, save and except for the supplementary benefit plans for certain people in the sector, such as the professional firefighters and police services, which is something that makes a lot of sense.

A lot of people have expressed concerns, though, about the supplementary benefits, and that's the one I wanted to touch on first, the supplementary benefits going to the sector that is dealt with by arbitration. It really doesn't then become a negotiated supplemental plan; it becomes an arbitrated supplemental plan, and there's great concern on behalf of municipalities that that will not treat them fairly. Before we hear all the comments during the hearings, I wonder if you would care to comment on the arbitration part of the supplemental plans, if you've given that any thought.

**Hon. Mr. Gerretsen:** Let me put it to you this way: The way I look at it is that what we are allowing is for supplemental plans to be negotiated at the local level between municipal employers and municipal employees in certain sectors. Being from a local background and having served in local government for a number of years, you and I know that there are always different opinions as to how arbitration affects the system. All I can tell you is that whatever benefits and salary demands are being negotiated at any time, depending upon the economic and political climate, it's always a question of give and take. Presumably, if a group is more interested in benefits at any one particular time, then their demands or what they get by way of monetary increases are limited.

Basically, what we're doing with this bill is allowing one additional area of negotiation to take place as it relates to supplemental plans. How that ultimately unfolds in the long run remains to be seen. My only comment to the municipal sector has been—and we brought this matter forward at the AMO MOU meeting; we have monthly meetings with the larger executive of AMO—that I don't think the municipal sector should discount its own ability to negotiate, in exactly the same way that I would never discount the ability of the different unions to negotiate with the employer.

**Mr. Hardeman:** The other question relates to the same thing. The concern that municipalities have with the supplementary plan is in fact the cost. At the same time, the other part of the legislation is to devolve the province out of the OMERS business, to get right out of it. The responsibility for any future requirements for more money or something to deal with the increased cost of the pension plan will no longer rest with the province; the liability will no longer rest with the province.

Going back to the supplementary plans, if at the end of an arbitration the award goes to increase the benefits to all existing, in this case, firefighters, who is going to pick up the cost of that in the future? Presently, without this bill, anything like that would be at the total expense of the province of Ontario, and it is no longer going to be. Could you please tell me why this bill is devolving the responsibility of the finances of the plan away from the province?

**Hon. Mr. Gerretsen:** No, it's devolving the governance of the plan. It's the only public sector—



**Mr. Hardeman:** But all the liabilities too, John.

**Hon. Mr. Gerretsen:** Just a minute, now; there's an asset base of \$39 billion there.

We're devolving the governance of the plan, which I think everybody agrees to, even you, yourself. I've got a very nice letter in which you agreed that OMERS should be devolved. I've seen letters from just about all parties in the Legislature, and certainly many of the members.

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When we're talking about the supplemental plans that may now be negotiated, I think it should be clearly understood that, whatever the result of those negotiations is going to be, there's going to be an equal contribution made by an employee and by the employer for whatever the benefit is. I know that municipalities look at it from the municipal cost, but we should also take a look at, what is it going to cost the individual employee? It may very well be that those employees, or the majority of those employees within a bargaining unit, may not want to negotiate this. So the assumption that this is going to cost municipalities money—yes, it may, if the negotiations are successful, but it will cost the individual employees an equal amount of money. It's just something else that they can bargain for.

Basically, what it boils down to is earlier retirement, that they can retire at an earlier stage of their career than they currently can. It's going to cost the employee money—exactly the same amount that it will cost the employer for that particular employee.

*Interjection.*

**Hon. Mr. Gerretsen:** Yes, it will. Right now, it's an equal-contributed plan. The employees contribute equally to the OMERS pension plan as employers, exactly the same amount. Whatever the new benefits are will be cost-shared on exactly the same basis.

**Mr. Hardeman:** I think my colleague has a question.

**The Chair:** I'm sorry; your time has been exhausted. Ms. Horwath.

**Ms. Andrea Horwath (Hamilton East):** Minister, I wanted to ask you a little bit about the timing of the bill, the way you see it moving into the future. I'll have one more specific question, but I've heard from some stakeholders a concern that this is moving very quickly. The changes have been a long time coming, and there's some concern that it's moving quickly. Others are saying that it's not moving quickly enough.

Could you tell me, if you're crystal-balling where we are now, what you see occurring after hearings into the next phase of the bill? Could you comment on that at all?

**Hon. Mr. Gerretsen:** It's just like any other piece of legislation. For some people, it's going too fast, and for others, not fast enough. This bill was introduced in June, so that's about five, six months ago. We're now having hearings for four days, then there will be a day of clause-by-clause. I suppose it all depends on the legislative process and on the workings of this committee as to when it will be reported back to the House and how much debate there will be in the House at both second and third reading. I don't want to prejudge that. That's up to the House leaders to decide.

**Ms. Horwath:** In regard to your greater experience in these matters than mine, being fairly new to the process, would you expect there would be committee hearings again after second reading?

**Hon. Mr. Gerretsen:** I think that all depends on this committee—or, I should say, probably it all depends on the House and the House leaders involved. So I don't want to prejudge anything in that regard.

**Ms. Horwath:** All right. That's fair.

Minister, I want to get your general opinion on the governance model that was chosen. There were options around that, and I would like your insights as to why the governance model you chose is the one that's here, as opposed to other plans of a similar nature that are public sector plans.

**Hon. Mr. Gerretsen:** It's my understanding that most of the other public pension plans have the same sort of corporate model. I know that one of the main unions involved, CUPE, doesn't particularly care for this particular model. I understand where they're coming from, but we felt that because there were 90 different unions involved, it was the best model to go with.

**Ms. Horwath:** Any particular reasons why you think it's the best model to go with?

**Hon. Mr. Gerretsen:** The way I understand it, it has worked fairly well with respect to other public pension plans as well—a similar model. That's why we adopted the arbitration model as contained within the teachers' pension plan as well, in order to come to a conclusion on any of the issues that may have to go to mediation and then to arbitration.

**Ms. Horwath:** Minister, because you raise the issue of a particular stakeholder who has some concerns about the model, I'm wondering if you could comment on what your perspective is on the relationship between the two bodies: the sponsors corporation and the administration corporation. I'll lay it on the table—particularly when it comes to issues, for example, of investment strategies and those kinds of issues.

**Hon. Mr. Gerretsen:** It's my understanding that one of the corporations will look after the management of the plan and the other one will look after the investment side of the plan, and that will continue.

**Ms. Horwath:** I guess what I'm asking you, though, is do you see any relationship between those two organizations in that regard?

**Hon. Mr. Gerretsen:** Do you want to answer that?

**Ms. Janet Hope:** Sure. It's a general principle of pension governance that the sponsor roles be kept distinct from the fiduciary roles in managing the pension plan. The sponsors corporation is proposed to look after the decisions around benefit plan design and the administration corporation is to continue the fiduciary responsibilities that are currently carried out by the OMERS board.

**Ms. Horwath:** In regard to the fiduciary responsibilities, the actuarial advice that the sponsors corporation receives, though, comes from the administration corporation?



**Ms. Hope:** Correct.

**Hon. Mr. Gerretsen:** That's my understanding, yes.

**Ms. Horwath:** I don't have any other questions initially, Madam Chair. I'm actually looking forward to hearing from the stakeholders and getting into some of the drilling down that I expect we're going to get from the stakeholders as they come forward through the remainder of the hearing. So I'll just leave it at that.

**The Chair:** Anybody from the government side?

**Mr. Brad Duguid (Scarborough Centre):** Just very briefly, I want to thank the minister for being here today and in particular for moving this forward after first reading. It really does give all parties an opportunity to listen very carefully to the deputations that we're about to hear and give very serious consideration to some of the good ideas that may crop up out of that. So on behalf of the government members, I just want to thank the minister for that and let the deputants who are here today and who will be coming know that we're looking forward to hearing their concerns, their suggestions and what they have to say.

**The Chair:** I believe now we have the opportunity for a technical briefing, up to 15 minutes. For the purposes of Hansard, could you identify yourself again, just before you begin to speak. That would help.

**Hon. Mr. Gerretsen:** I've got another meeting currently going on, but I'd like to thank the members for their attention and wish you well in your deliberations as you hear from the important stakeholders you're about to hear in the next four days.

**Ms. Dana Richardson:** My name is Dana Richardson and I'm the ADM of the local government division of the Ministry of Municipal Affairs and Housing. I have here a very brief technical briefing for you on the key features of Bill 206. We've provided the members with a copy of some slides, which I will be referring to as we go through the bill. The presentation is going to be a summary and an overview, and certainly we're happy to answer your questions as we finish this.

The devolution of OMERS governance is the main feature of this bill. The goal of the legislation is to provide a pension plan that's governed by those who pay into it and those who benefit from it. Therefore, the stakeholders will have the responsibility of governing the plan, very much like other public sector pension plans do.

Under the current arrangement of the legislation, the province plays the sponsors role and the OMERS board plays the administrative role of the fiduciary. The board members of OMERS are appointed by the province, an equal number of employees and employers and a provincial representative.

After devolution, the act will provide for the plan sponsors, being the employers and the employees, to assume the province's current responsibilities. On page 2, we have a chart that outlines what those responsibilities actually are.

The governance of the pension plan has four major roles, and this governance structure follows very much the governance structure of other pension plans. It's

divided primarily into a sponsors role and a fiduciary role.

The first two boxes on the left are the description of the fiduciary role: the plan administration, determining the appropriate funding policies for the plan and making sure that the benefits are secured at a reasonable cost. The investment policies and investment planning necessary to pay for those benefits are the responsibility currently of the OMERS board. In the future model, those will be the responsibility of the OMERS Administration Corp.

**1630**

The bottom two boxes on that page relate to the sponsors role. That would be to appoint the fiduciary board and to be responsible for the plan design and the benefit changes. Currently, those two roles are played by the province of Ontario through the OMERS act and regulations and through the Lieutenant Governor in Council. After devolution, these roles will be played by the sponsors corporation, which would be made up equally of employers and employees.

On page 5, as the minister has mentioned, we have proceeded with this devolution on the basis of the 2002 OMERS board report and a commitment made by the Premier when he was Leader of the Opposition which addressed some of the issues left unresolved by that board report—in particular, the supplemental plans and dispute resolution. We have received a great deal of input from stakeholders since 2002 as well.

On page 6, the approaches to the legislation are outlined. It is very important that we continue the existing plan itself. It will continue to be a defined benefit plan. It would provide for an orderly transition, so that it is absolutely seamless. For those who are receiving pensions today, they will continue to receive pensions, and the governance will proceed without any gap. We will put in place a framework to permit the establishment of supplemental benefit plans. We'll establish permanent parameters to safeguard employer fiscal sustainability within the legislation itself, and we'll provide for the sponsors corporation to be able to amend its own procedures for an orderly procedure on into the future.

On page 7, we outline what the proposed governance structure is. As Janet has previously mentioned, it consists of two corporations. Both of them are statutory, not-for-profit corporations. One is the sponsors corporation and the second is the administration corporation. Both corporations would have natural-person powers and they would be subject to the usual rules of the Pension Benefits Act here in Ontario and the Income Tax Act federally. The OMERS plan will continue to be a defined benefit plan.

On page 8, we set out who the eligible employers are. Section 7 of the act would provide for OMERS to continue to be the exclusive provider of pension products for the municipal sector. All municipalities and most local boards would be eligible to participate. That would include police services boards and also the non-teaching staff of school boards. Other employers undertaking



municipal services are eligible to request membership, and they could become associated employers. An example of an associated employer today would be the staff of the Municipal Finance Officers Association of Ontario. On into the future, other such associations could apply. All existing associated employers will continue.

On page 9, we set out what the proposed features are to safeguard the fiscal sustainability of the pension plan. The first and most important is that it's an equal sharing of plan contributions by both employers and employees, that they are a check and balance against each other.

Secondly, the sponsors corporation is not permitted to make benefit changes within the main plan unless the ratio of market value of assets of the pension fund to the going-concern liabilities is not less than 1.05 and the ratio of solvency assets to the solvency liabilities is not less than 1.0. In plainer language, that means that, as a going concern, where the value exceeds liabilities by at least 5%, only at that time would the sponsors corporation be permitted to improve benefits.

There are two exceptions. Those exceptions are that there would be some reason for legal compliance under the Pension Benefits Act or the Income Tax Act or if the going-concern liabilities would not otherwise be increased by more than 1%.

On page 10, we set out some of the transitional features of the bill. As a policy matter, the province proposes to make the initial appointments to the sponsors corporation based on recommendations from the sponsors. These appointments would last for a period of one year, after which section 38 comes into force. After that, the sponsors corporation could decide itself on its composition and membership. The current members of the OMERS board would be the initial appointees of the administration corporation, with two additional positions. The purpose of this would be to provide for continuity of the fiduciary role that's currently played by the OMERS board. The position of the provincial representative would no longer exist because this would be a completely devolved plan.

On page 11, the sponsors corporation would be responsible for such things as, first and most importantly, changing the plan design; that is, it would be responsible for any changes in benefits and what type of supplementary plans could be offered. Secondly, it will determine the terms and conditions of the OMERS plans, for example, eligibility for the pension plans. It would agree on what employers could participate in OMERS, it would agree to administer other plans, receive reports from the administration corporation on investment and financial state of the plan, approve the remuneration of the administration board and set the contribution rates based on the advice of the administration corporation and the actuary.

The sponsors corporation would meet at least once every three years following the tri-annual plan valuation to consider whether to change benefits or contribution rates. The tri-annual valuation is required by the Pension Benefits Act. The sponsors corporation would also meet,

if requested by the administration corporation, under certain circumstances outlined in section 42 of the act. Section 42 would apply until the sponsors corporation passed a bylaw setting out different types of procedures.

On page 13 is the proposed sponsors corporation composition. There are an equal number of employer and employee representatives, for a total number of 18, which includes two non-voting members. No member of the sponsors corporation may be cross-appointed to the administration corporation. There's a complete separation of roles on the boards between the two corporations.

On page 14, we outline some of the features of the proposed supplemental benefit plans. The sponsors corporation could establish supplemental benefit plans in addition to the main plan for police and fire personnel and for all other sectors. That's set out in section 4 of the act. The sponsors corporation, when making decisions about additional benefit options available to the plans, would receive advice from two advisory committees and from the administration corporation. Supplemental benefits are optional, and that's what the minister referred to as being accessed through local decision-making.

On page 15: Section 14 of the act provides that the actuary is required to take into consideration the impact on the main plan of any benefits provided by the supplemental plans when determining the contribution rate for the supplemental plan members. In lay language, that means if there are any additional costs in the main plan due to the creation of a supplemental plan, that would be paid for by the beneficiaries of the supplemental plan. It would not be paid for by any other beneficiaries of the main plan.

#### 1640

On page 16, we set out the feature of the 2.33% pension accrual rate. Currently, the Municipal Act provides that there is a 2% accrual rate cap on pensionable earnings, and this will be transferred to the new act, with the exception of a 2.33% cap for eligible employees under federal legislation. The Income Tax Act of Canada has recently been amended to allow public safety occupations to accrue a 2.33% rate. What this actually means is that in most cases, persons achieve a pension benefit of about 70% of their salary at 35 years at a 2% rate. On the 2.33% rate, that would be achieved in 30 years. So you can achieve that 70% earnings level at a faster rate. That benefit would be enabled only on a go-forward basis, not for past service benefits.

On page 17, we outline what the proposed mediation process would be. The decisions of this sponsors corporation will be based on a simple majority as set out in section 26 of the act. The sponsors may refer a matter to mediation, or mediation can be triggered in the following way:

A meeting is held on a specified change, such as a benefit increase, and the member of the corporation makes a written request for a change or the status quo, and if no decision is made within 30 days, it will go to mediation. The mediator could be chosen by a decision of the sponsors corporation or, if the sponsors cor-



poration was unable to make that decision, by the CEO of the administration corporation. So the act provides a mechanism for the choice of the mediator.

The mediator then would provide a written report that would set out what the issues are, the results of the mediation and any recommendations. If resolution seems possible, the mediator could extend the time. The member who originally put forward the request would be able to request arbitration if a decision isn't made following the mediator's report.

Page 18 sets out the arbitration system. The method for choosing an arbitrator would be similar to that as a mediator. The chair of the sponsors corporation could choose that arbitrator if the corporation could not otherwise be decided upon. The person chosen as a mediator could also be the arbitrator.

The matter referred to arbitration would either be decided on by the sponsors corporation or by the member who originally requested it. The arbitrator is required to take into consideration the legal requirements, plan valuations prepared by the OMERS actuary, the advice of the administration corporation, and the economy of Ontario, including economic conditions and the financial state of the OMERS employers.

Finally, the arbitrator would be limited in making a decision that would not require a contribution rate increase on the part of both the employer and the employee of more than 0.5% of the salary of a plan member. This is a very similar cap as set out in the teachers' pension plan.

The sponsors corporation would be given the ability to pass a bylaw to require employers and employees to pay a fee to fund any of its costs that are not related to pension administration. Some of these costs that might not be considered to be valid under the Income Tax Act would be things like supplementary decision-making—that is, mediation and arbitration—or actuarial and consulting fees related to that mediation and arbitration. The administration corporation could be asked to collect those fees on behalf of the sponsors corporation.

On page 20, we set out what the proposed administration corporation would do. It has responsibility for administering the plan—for plan administration, investment policy, asset allocation and investment management. It looks at the actuarial valuation of the plan and sets the actuarial assumptions of plan funding policy, and provides technical support to the sponsors in making their decisions. It also provides the administrative support for the sponsors corporation.

Finally, on page 21, we set out what the proposed composition of the administration corporation would be. It would have 14 members, once again in equal number of employer and employee representatives.

That's a very quick and high-level overview of the act.

**The Chair:** Thank you for the briefing. As agreed to by subcommittee, this time has been allotted for all three parties to ask questions, beginning with the official opposition.

**Mr. Hardeman:** Thank you, Dana, for the presentation. On the proposed mediation for the sponsoring

corporation, not having looked directly at section 43, why would the sponsoring corporation need mediation if all it requires is a decision? It doesn't say mediation if it's a negative decision; it just says mediation if they didn't make a decision. How could that happen?

**Ms. Richardson:** The decisions of the corporation are required to have a simple majority. So it could be possible that there is a stalemate or it could be possible that they just don't call a matter for a decision, don't call a matter for a vote within the 30-day period. In either of those situations, there would be no decision within 30 days and the matter could be taken on by that member to mediation.

**Mr. Hardeman:** I have just one final question, and then I think my colleague would like to ask one. Looking at the overall presentation—as you said, it's a pretty high-level presentation—I understand that what is here is that we're devolving the administration of the sponsor of the OMERS program, and this piece of legislation tells us how that sponsoring agency is going to work.

**Ms. Richardson:** That is correct, yes.

**Mr. Hardeman:** Thank you.

**Mr. Tim Hudak (Erie-Lincoln):** Thank you very much for the presentation. I'm not sure if you can answer this question, if the decision has been made by government already, or maybe the parliamentary assistant can. It appears that the formation of the sponsorship committee over time is going to be quite an arduous process, with so many unions and employers that are going to be represented there. There may be substantial costs involved with that, over time. I know legislation enables that to be passed on to the plan members, but my understanding is that, in the past, with teachers and HOOPP, that had been paid for by the province as opposed to the plan members. If it takes a long time, it's going to be a substantial cost to plan members. Will the government fund the costs of the initial transition period to get to the fully and duly elected sponsors group?

**Ms. Richardson:** At this point, we don't actually know how long that transition period will be or what those types of costs will be, so there is no decision about that.

**Mr. Hudak:** Maybe I could just refer that to the parliamentary assistant, if that is something the government is considering, because it could be millions and millions of dollars in transitional costs.

**Mr. Duguid:** Right now, at this stage, we really are here to receive input. That may be one of the things we'll hear from the deputants as it moves forward. We'll certainly consider all of the suggestions as we move forward. No decisions have been made or no direction has been given from the government on that at this point in time.

**Mr. Hudak:** OK. Thank you.

Back to the assistant deputy minister, who had made the point on rebound costs, to make sure I understand that. Maybe you can walk me through an example. If there is an additional cost to the main plan by a supplemental agreement, I thought I understood you to



say that it would ensure that those who benefit from the supplemental plans will cover those increased costs in their plan.

**Ms. Richardson:** That is correct.

**Mr. Hudak:** Can you give me an example of how that would take place?

**Ms. Richardson:** An example might be—we'll say the 2.33% accrual rate. If that was the benefit that was being offered and calculated, it may have the effect of encouraging people to retire earlier. Because of earlier retirements, there could be additional costs in the main plan as well, for the main benefits. Therefore, all of those costs would be absorbed by the persons who are benefiting from the supplemental plan. A calculation would be made and they would pay that additional amount.

**Mr. Hudak:** So there should be no circumstances under which somebody who belongs to CUPE, say, would pay for increased benefits to police or fire under a supplemental plan?

**Ms. Richardson:** That is correct. We've set out that provision especially to safeguard against that situation.

**Mr. Hudak:** I am wondering about a policy decision. I can appreciate that emergency workers are treated differently in this bill if they are fire or police workers, but paramedics are not given the opportunity to have supplemental plans. Why was that policy decision made? Is that an open question, for paramedics to have similar treatment? And I guess the last part of that question: Will the sponsors corporation have the ability to add paramedics as a supplemental plan beneficiary?

**Ms. Richardson:** The way the act is written, it is possible that the sponsors committee could decide that another group is eligible for a supplementary plan. Under the current provision, as it's set out right now, it's being offered to the police and fire sectors.

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**Mr. Hudak:** If I can understand it, I don't know if it was at—

**The Chair:** Mr. Hudak, can you make this a really short question?

**Mr. Hudak:** Why was the line drawn for police and fire but not paramedics if the goal was for emergency workers to benefit from supplemental plans?

**Ms. Richardson:** Initially, it was firefighters who were covered by the Income Tax Act with respect to public safety occupations, and only recently have paramedics been added in. So there has been some history over time of differentiated benefits, for example, between police and fire sectors and other municipal employees. Initially, that differentiation has been continued.

**Ms. Horwath:** I asked the minister about the model, and I'm going to now ask you about the model. I think the minister spoke about the teachers' pension fund particularly, but are you aware of other trustee models in Canada that work well as opposed to the corporate models?

**Ms. Richardson:** I'm aware of one other plan, and that's the OPSEU pension plan, that is based more on the

trust model. But the teachers' plan is actually a corporate model.

**Ms. Horwath:** So, then, can I ask again why the preference was for more of the corporate model versus more of a trustee model?

**Ms. Richardson:** The decision was made to set up a corporation. It does continue the current corporate model that OMERS is under. It also has worked well in other pension plans, and it is subject to all of the very rigorous fiduciary responsibilities as required under the Pension Benefits Act and the Income Tax Act.

**Ms. Horwath:** Was there any serious consideration at all given to the other type of model or was it an initial understanding that the corporate model was preferred, so that was the direction that most energy was put into?

**Ms. Richardson:** Clearly, a number of options were reviewed.

**Ms. Horwath:** Madam Chair, is there a way I could get any briefing notes on those reviews of the various models, by chance?

**The Chair:** You can make the request.

**Ms. Horwath:** Could I get that, please? That would be great. Thanks very much.

I had a couple of questions that were already asked by the member of the official opposition, so at this point I'm going to listen attentively to the remarks that come from the stakeholders, because I believe that's the most important thing for us to do today.

**The Chair:** Anybody from the government side who wants to ask questions? Mr. Duguid.

**Mr. Duguid:** I have no questions, Madam Chair. My colleagues may. No? We're good.

**The Chair:** Thank you for being here and for the briefing. It was very high level but it was interesting.

We're now at the public portion of our hearings. I'd like to welcome our witnesses and tell everybody who's here that you have 20 minutes to make your presentation. When you are called forward, if you could come up and state your name for Hansard. If you have any handouts you can provide them to our clerk, and she'll be pleased to pass those around.

## ONTARIO MUNICIPAL EMPLOYEES RETIREMENT SYSTEM

**The Chair:** Our first delegation is Mr. Frederick Biro of OMERS. Welcome.

**Mr. Frederick Biro:** Thank you very much.

**The Chair:** Is there anybody else with you? We have two other names.

**Mr. Biro:** Yes, we have two additional people.

**The Chair:** They're welcome to join you.

**Mr. Biro:** I was in the overflow room.

**The Chair:** Good. Those are good seats.

**Mr. Biro:** I rushed over here, so I'm out of breath. It was a lot cooler in there. I appreciated the escort from security to make sure I got there safely.

**The Chair:** So you have given us a handout.

**Mr. Biro:** Yes, we have, Madam Chair.



**The Chair:** This is the handout. OK. We'll make sure everybody has it. Welcome.

**Mr. Biro:** Thank you very much, again. I'm pleased to be here. I am joined by Dave Kingston, who is vice-chair of the OMERS board, and Mr. Paul Haggis, who is president and CEO. I'm Frederick Biro. I am chair of the board and have been for the last two years.

Today we come before you as fiduciaries of the OMERS pension plan with the sole mandate of protecting the best interests of our members. We also come as representatives of a mature organization with a history of providing secure pensions through sound management and investment practices for workers in the municipal sector in Ontario. We have grown to be one of the largest public sector pension plans in Canada, and we have an international reputation as a financial institution.

As the minister said in his opening remarks, we're also here as the only public sector pension plan in Ontario that is not controlled by those who pay into the plan; namely, our members and employers. OMERS autonomy has been a goal of the board since the mid-1990s, and we are strong and unanimous supporters of devolving responsibility for the plan to its sponsors.

Our sole intent in being here today before you, as the fiduciary board, is to protect the interests of our members, and those interests are simple and straightforward: We want the 100,000 retirees and 260,000 employees of Ontario's municipalities, school boards, local hydro utilities, police and fire departments, children's aid societies and many others to have secure income for their retirement. To put things into perspective, if we consider a family of four people, it stands to follow that one million Ontarians are directly affected by the OMERS plan.

This means providing members and employers with value for money. It means offering a secure pension benefit, survivor benefits, full inflation protection and income for members who become disabled and can no longer work.

We also remind ourselves on a daily basis that OMERS plays a significant role in the provincial economy. Through our investment programs, including our infrastructure investment initiative, we have contributed billions of dollars to the Ontario economy and created thousands of jobs.

For example, OMERS, through its investment entities, recently announced a \$4.25-billion investment in Bruce Power for the restart of Bruce A units 1 and 2. Fifteen hundred construction jobs and 44,000 person years of employment will be created because of this one investment.

The vital role that pension plans can play in infrastructure, and in creating an efficient financial system, was the subject of Bank of Canada Governor David Dodge's remarks just last week in Montreal, Quebec. He said:

"Here in Canada, policy-makers need to think about how our pension system can contribute to efficiency. There is a need for long-term investment in critical

infrastructure to support Canada's future production capacity. And there are pools of pension capital that, given their very long-term horizon, can be invested in this manner."

So OMERS is extremely important to this province, both in terms of the one million people we affect and our impact on the economy.

That's why we're here, to ensure that the ability of OMERS to discharge its quite enormous responsibilities is not inadvertently hampered or impaired. Our principal objective in considering the impact of Bill 206 is to ensure continuity and minimize disruption to the plan during devolution of OMERS governance. We believe our suggestions are non-controversial and in the best interests of all plan members.

Specifically, we are proposing amendments that will ensure the terms and conditions of the plan are clear, updated, well documented and understood for the new plan's sponsors and administrators; clearly separate and clarify the roles of the sponsors corporation and administration corporation; and address significant technical issues needed to administer the plan.

We also want to introduce some additional considerations that we think will strengthen the plan.

First, clarify plan text: To give the new plan sponsors and administrators a solid footing, we recommend that the plan text, which documents the benefits payable under the plan and the required contributions in Bill 206, be amended and consolidated in one document prior to the proclamation of the new act.

This proactive measure will ensure that the sponsors corporation and the administration corporation are working with an updated and accurate plan text document that can be readily interpreted and administered and which minimizes confusion or legal challenges.

A new plan text can be included as a schedule attached to Bill 206 setting out the terms and conditions for the plan as of day one. This is not a new concept.

When the teachers' pension plan was devolved, the plan text was included in the Teachers' Pension Act as a schedule to the legislation. This schedule is then transferred to the partners committee with authority to amend it going forward.

Similarly, during the founding of the OPSEU pension trust, the government at the time made a number of housekeeping changes to the plan prior to transferring it to the new structure.

Consistent with these two examples, we support Bill 206 in setting out that, following proclamation of the legislation, the sponsors corporation have the authority to make any subsequent amendments to the plan.

Clarify roles: In order that the newly constituted sponsors corporation can govern the plan effectively, and to avoid potential conflict, the distinct roles and responsibilities of the sponsors corporation and the administration corporation must be clearly spelled out in Bill 206. That was certainly part of your technical briefing before from the ADM.

Our concern is that some of the language used to describe the roles and responsibilities in the draft bill



could result in differing interpretations or in needless overlap.

By amending the language in the bill, and we point out the relevant sections in our written submission, we can clarify that the sponsors corporation is responsible for plan design and setting contribution rates and that the administration corporation is responsible for administering the plan and managing the investment program—again, consistent with the briefing you received from the assistant deputy minister.

Again, this is not a new concept but rather follows what is now a well-recognized and very successful model as exemplified by the Ontario teachers' pension plan.

1700

Technical issues: In our submission we suggest several amendments to improve plan administration. We characterize them as "technical" issues. As fiduciaries, we are concerned about the effective functioning of the new governance structure and wish to ensure that the committee is aware of the opportunities and considerations in adopting a new OMERS act. Given our roles as stewards of the plan, OMERS is uniquely placed to recognize unintended anomalies and recommend changes to correct them.

For the benefit of the committee, one such example is the requirement under section 11 of the bill that employer contributions must equal member contributions.

Although the intent is that employers and members share equally in the funding of the plan, in practice, at any given time the employer contribution could be a little more or less than the member contribution. For example, when a member buys back outstanding service in the plan, the member pays the full cost.

As such, we recommend amending the bill to provide authority for employers and/or members to contribute more or less, as appropriate, while maintaining the overall intent that contribution rates be equal.

Other technical matters are also appended to our submission.

Those represent our three primary areas of interest. We'd like to now highlight some additional considerations for the bill.

Experience tells us, and we've been at this for 42 years—not myself personally but certainly the plan has—that it's important that there be enough time to execute a successful implementation of the new act.

The bill contains numerous complex changes in governance and contemplates the implementation of supplemental plans—a new pension plan design that does not currently exist in Ontario. It will take a considerable amount of time and expertise to prepare for the supplemental plans following proclamation.

There is the issue of costs. There will be recurring and one-time costs associated with, for example, legal fees, actuarial fees, administrative costs attributable to the establishment of the sponsors corporation and the development of a supplemental plan model.

I want to point out that there are strict legal restrictions on what the sponsors corporation can and cannot charge

to the basic plan. For example, it is not permitted to recover from the basic plan the start-up costs or expenses associated with the design of supplemental plans.

Some of you may recall that when the Ontario government devolved the Ontario teachers' plan and the OPSEU pension trust, it committed resources to ensure the successful transition of these plans. We suggest the government find the appropriate means to ensure transitional funding, as well as ongoing funding, to support the sponsors in educating themselves as they assume their new and very important role.

Solvency: With Bill 206, the government also has an opportunity to address a long-standing concern that directly affects the affordability of pensions—and not just for OMERS but for all public sector pension plans in Ontario.

Currently, OMERS is subject to generic solvency funding rules under the Pension Benefits Act. These rules are designed to protect employees from private sector bankruptcies where pension plans are not adequately funded. We are all aware of some of these examples of shortfalls from recent media coverage.

There is, however, a fundamental difference between private and public sector pension plans, as public sector pension plans, while not guaranteed, are funded either directly or indirectly by governments and there are no foreseeable circumstances that would lead to every police service, fire service, municipal electrical utility and municipality going bankrupt. I simply suggest that won't happen.

The solvency issue is particularly relevant in the case of supplemental plans, which are enabled in Bill 206. As I mentioned, statutorily these plans must be funded separately from the existing plan and will face extraordinary additional costs as a result of the solvency funding requirement.

For example, the cost of implementing certain supplemental plan benefits can be quadruple the total cost without solvency funding in the first five years. This places additional, and perhaps even insurmountable, fiscal pressure on the employers and employees who will fund them.

I'd like to point out that every other Canadian province has pension legislation that exempts public sector pension plans from funding solvency valuations.

Flexibility: There are several provisions that should be considered in Bill 206 to make the plan responsive to new and emerging member needs. For example, the bill does not allow the sponsors corporation to improve the CPP offset in the pension formula. No other pension plan in Ontario is subject to such a limit.

Or, ultimately, the sponsors corporation may wish to offer ancillary post-retirement benefits to OMERS members. The ability to contemplate such a measure is common in other jurisdictions, such as British Columbia.

Also, it seems that new kinds of employers in the broader public sector are being created every day, such as devolved crown agencies, local health authorities and not-for-profit corporations. These employers could



conceivably benefit from access to an established and affordable pension plan like OMERS. To make this a reality, authority should be transferred to the sponsors corporation to allow that body to define and admit additional classes of Ontario-based employers related to the local government or broader public sector.

In conclusion, we have presented recommendations and amendments that we believe are in the best interests of all our members and employers. These measures will strengthen Bill 206 by clarifying roles, terms and conditions, and technical aspects of the plan; minimizing disruption during transition; and ensuring the plan remains affordable to members and employers.

We genuinely look forward to the passage of an amended Bill 206, and we have committed ourselves to working with the sponsors corporation to continue to deliver a superior pension benefit system for local government employers and employees across Ontario.

We also very much appreciate the opportunity to start these series of hearings as the lead delegate, who's non-government in this case. On behalf of OMERS, Madam Chair, we thank you and the committee members for their time. We'd be pleased to take any questions you may have.

**The Chair:** You left about two and a half minutes for each party, beginning with Mr. Hardeman.

**Mr. Hardeman:** In a previous presentation—I believe you were present—there was talk about the structure of the boards, and the issue that they have on the sponsoring agency retiree representatives, but they're non-voting. Do you have any opinion on how the plan functions, whether there's a need to have the retirees represented on the decision-making body of how the plan will operate?

**Mr. Biro:** It would be inappropriate for me to have an opinion on that. I think that really is up to the sponsors. I'll simply say that our experience as the administration corporation, because we've had the benefit of a retiree member for as long as I've been on, I think, and certainly before, there was always a value of having them on the administration corporation. That's just my own experience. It would be inappropriate for me to comment on something for the sponsors.

**Mr. Hardeman:** The present retired member is in fact a voting member of the organization—

**Mr. Biro:** Of the administration corporation, and I can only speak personally. We have had the benefit of some sparkling people, who I think have added a lot.

**Mr. Hardeman:** Does it happen or does it occur where the decisions made by the sponsor—in this case, the province of Ontario—would negatively or positively impact the retiree's pension?

**Mr. Biro:** Again, I think that's more for the sponsors to comment than me. We've always had a very good relationship with the government as sponsors, in terms of having them understand why we're making certain recommendations. But then I know very well every government of the day would then get input itself directly from the sponsor groups.

**Mr. Hudak:** Thank you very much, chair of OMERS, for the presentation. I asked the ministry staff a bit earlier

about the importance of the transition cost, and the parliamentary assistant said that this is going to be an open question, to see what the advice is. I don't want to ask you to speculate, but could you perhaps give us some indication of what those transitional costs may be that will be incurred by OMERS pension plan members?

**Mr. Biro:** I can speculate within a certain window on one aspect of it, which is the creation of supplemental plans, because we can't fund that. We're the basic plan; those would be stand-alone pension plans. We've estimated—and this is a ballpark estimate from our lawyers and pension experts—it will cost you \$5 million to \$6 million to set up the province-wide supplemental plans, because you have to hire actuaries, you have to hire lawyers, you have to have draft documents etc. Just on the supplemental plan aspect alone, it will be \$5 million to \$6 million. That's our best guess at this moment.

**Mr. Hudak:** How will the sponsors corporation, in terms of—it might be very unwieldy, right? Everybody will want to have their say at the table, naturally.

**Mr. Biro:** I listened very carefully to the presentations earlier on. It's my view, and I expressed this to a meeting of the sponsors back on September 23, that the sponsors corporation is going to be very busy in its first year. They have to draft bylaws. Before they draft bylaws, they have to introduce themselves, they have to agree on a meeting room table, and I heard that the assistant deputy minister said that the basic plan, the administration corporation, were responsible for administrative costs. I think we're going to have to have a bit more legal analysis of exactly what we can do.

In my view, and again, as chair of the board, we'll do everything we can to work successfully with the sponsors to make them successful, but there are simply some things we can't pay, in law. I think they're going to have to be busy, and there has to be a method found to ensure they educate themselves before they're called upon to make some very important decisions.

1710

**Ms. Horwath:** I wanted to ask about your comment around trying to open up the number of employers that would be able to participate. When we had the technical briefing, the ADM indicated that that's something that's possible. It's in section 6 of the act. So I guess what I'm wanting to know, from your perspective, is what's lacking in that regard. Your comments indicate that you think that there is more opportunity there. So you don't think that it's addressed adequately in section 6?

**Mr. Biro:** I would refer you to the technical submissions, instead of taking up your time and my fumbling through it. Really, what we're arguing about is that, as an example, we want to ensure that the maximum flexibility is provided for the sponsors, and right now, as we interpret some of the language, we're not sure it's there to the extent that it should be there, especially around allowing associated employers to come in. I'd be happy to refer you to the technical submission. I'd be happy to get back to you on that directly.



**Ms. Horwath:** All right. Just for a point of clarification, though, when you talk about associated employers, are you suggesting perhaps private contractors that are—

**Mr. Biro:** I'm not suggesting anything necessarily beyond giving the sponsors the flexibility to make some of those determinations. The example that was used previously by the ADM, I think, was one of the associations, the municipal finance and treasurers' officers. Those are more in our sweet spot—if I can put it that way—traditionally, but I'm not advocating either expanding or narrowing that. I'm just advocating that we think the sponsors should have the flexibility to deal with it.

**Ms. Horwath:** You don't, at this point, feel that the language that exists currently provides that flexibility.

**Mr. Biro:** Correct, and we'll get that clarified for you, exactly where it is in the technical submission.

**Ms. Horwath:** The only other question I have is in regard to some past criticisms of decisions that were made by the OMERS board and whether you think that this model that we are going down the road toward in Bill 206 would in any way alleviate concerns about that kind of a problem.

**Mr. Biro:** I think that's a question better directed at those who've put forward the criticism. I have to say that I've been around this for a little while, and when you compare our returns and our performance to the vast majority of our peer group, we do very well. Ultimately, when you're in the pension world—and we are fiduciaries—we operate under the prudent-person rule. We have to make decisions in the best interests of all plan members, not based on our personal bias. When you take that and you take a look at our performance returns, again I have to tell you quite honestly, I think we do very well. I'm sure there'll be others who'd be willing to take that question on and give you a different response.

**The Chair:** Thank you very much. Anybody from the government side?

**Mr. Duguid:** Thank you for your presentation, and your thoughtful presentation that you've left with us as well.

I want to see if it's possible for you to give us a human example of why you've been consistently supportive of devolution of the OMERS fund. One of the things that has been mentioned to me is that the current process, with the provincial government being the administrator, can be unwieldy when it comes to having to move quickly or you as a board having to make certain decisions that impact your members. Do you have any human examples where devolution would have assisted?

**Mr. Biro:** I appreciate the question. My difficulty in responding to some of the language—I get choked up about it, because I get quite passionate about this. I'll say that upfront.

The OMERS board, back in 1999 initially, and then again in 2001, made a recommendation to the government of the day—and this is not a criticism of any level of government; we know that sometimes we're off the

radar screen for reasons that are quite appropriate here—that for those parents who were on a disability pension and would then die, the children who are still in full-time school or still in education would continue to receive the full pension payments from the age of 21 to the age of 25. It took two governments—and again, it's not a criticism; it's just the fact—over two and a half years to make that decision. I tell you, I choke up on this one. It does impact on people.

As recently as October 28, I received a letter from a woman it directly impacted. All she wants is education for her child. We couldn't do it. So there are human examples out there. I've blocked out the names. I've got copies somewhere. I'd be happy to share that with the committee.

**Mr. Duguid:** I appreciate that. Thank you.

**The Chair:** Thank you very much for being here. We appreciate your submission.

**Mr. Biro:** Thank you very much.

#### MUNICIPAL RETIREES ORGANIZATION ONTARIO

**The Chair:** Our next submission is from the Municipal Retirees Organization Ontario: Mr. Don MacLeod and Mr. Bill Winegard. Good afternoon. As you settle yourself, this is your handout? Does everybody have a copy of it?

**Mr. Don MacLeod:** Yes.

**The Chair:** Great. When you're ready, if you could identify yourselves before you begin to speak. When you begin, you have 20 minutes. Should you leave any time, we'll have an opportunity to ask you questions.

**Mr. MacLeod:** Thank you, Madam Chair. With me is Bill Winegard, our executive director. My name is Don MacLeod. I'm president of the Municipal Retirees Organization Ontario.

I have a number of issues that I would like to talk about, but I'd like to tell you first who we are. MROO, the Municipal Retirees Organization Ontario, is an organization that was started in 1977 by three gentlemen in the London area. One of the gentlemen they've named a park after, across from city hall. We have nearly 15,000 all across Ontario, plus, while I didn't say so in our presentation to you, not only in Ontario but across Canada and outside of Canada, because OMERS pensioners can go wherever they want when they retire.

We're a non-partisan organization formed to voice the interests of OMERS retirees to the OMERS government, your government and the federal government—we mobilize our membership in the legislative matters that affect retirees—and to provide such other services that will improve the lot of our members.

We have a board consisting of eight members from around the province; we've split the province up into eight sections. Our board is elected at annual zone meetings around the province, and then they represent us. We bring them into Toronto here and we have our board meetings. We have four board meetings a year. We have



anybody from across the sector who's getting an OMERS pension on our board, anywhere from union members to police officers, to hydro managers, to nurses, secretaries and building inspectors. That was me, a senior building inspector for the city of Hamilton and a retired chief building official. So our board is made up of anybody who gets elected who receives an OMERS pension. To be a member of the Municipal Retirees, you must receive your pension, in whole or in part, from OMERS.

We've had the privilege of nominating to this government of Ontario the first, second and third retiree OMERS board members with a voice and a vote. The first member we had was a police officer, the second OMERS board member with a voice and a vote was a retired school board administrator, and our third and present one was a manager of municipal budgets. So these are three retirees who sat on the OMERS board with a voice and a vote.

We've advocated improvements to the OMERS pension plan. One of the improvements that I don't talk about in our presentation to you is that long before 1992, we were always advocating that we have a retiree on the board with a voice and a vote. Some of the things that have happened through our advocacy, and through others helping us, are that we have full indexing, spousal benefits to a maximum allowed by the law and a reduced CPP offset, although I'll speak about that later. In addition, we have had 20 years of sponsoring a benefit package for our members when they retire and lose their benefits. This is something that I will talk about later, but this is one of the things that we do.

We're the largest OMERS retiree organization, with the membership open to retirees from all walks of municipal life. We have a credible record of responsible advocacy, service and communication. We send three to four newsletters a year out to our members, to let them know what we're doing, besides our zone meetings, which we hold around the province. We move them around in each zone, so that our members may not get there one year, but they could the next year if the zone meeting is close to where they live.

We have an executive summary, and I think I should stress the executive summary. You can read what's there, our general comments, later. In our executive summary, we talk about the different issues as they come up in the bill.

**1720**

I'm going to go right down to number 8 first. I said I wasn't going to do it in the line of importance, but think in number 8, section 56 of the proposed bill should be deleted, because it says on a certain date—and I think it's three years from now—that if we haven't set up a proper system, if we don't have a sponsors committee set up, if we're not set up properly, this section is deleted and we have to start all over again. I don't think that should happen. The employers, the employees and the retirees should be able to sit down and come up with one section before the three years are over, because we've asked for governance, way back to the NDP when they were in

power, and to the next party, the Conservatives, and to the Liberals. Now we see something on the paper there, and we hope that we will have governance, and we hope that it's something that we can all agree with. I would stress that section 56 be deleted and that we should work at getting some kind of a governance system as quickly as possible.

One of our issues that we're very concerned with, and this is the title that they give us: "a former member," and in the bill, it classes us as "a former member." I find that hard to accept, because I paid 35 years into the plan when I was an employee of the city of Hamilton. I think the plan is really for members, for retirees, and if we could change that term of "former member," then it would please a lot of us—especially at the time when we got into a surplus and we found out that the employer took a contribution holiday, and that the employees took a contribution holiday, but there was nothing in the legislation or in the act that said retirees would get anything from these contribution holidays. I saw my 35 years of contributions into the pension plan going back to the employer, and the employees didn't have to pay.

We struggled, and we were able to gain some benefits from the OMERS board for our retirees—we got full indexing and some other benefits—but we felt left out, we felt we weren't part of the plan, because we're called "former members," and really the idea of a pension plan is for the retirees. That's one issue that we feel very strongly about.

The second issue is in sections 12 and 13, on the CPP offset: Right now in the act, there's a cap on the CPP offset. It says that we can't go below 0.6%, and we feel this is wrong. We feel that if the sponsors can negotiate it with the employees, and the employers on the sponsor's committee can negotiate a cap lower than the 0.6, we should be able to have that. It shouldn't be in the bill. It shouldn't be a detriment, it shouldn't be a cap that stops them from negotiating. Right now, the HOOPP has 0.5, and I think the teachers have 0.55. For our members who make much less than the YMPE, this 0.6 is a real detriment to them. We would ask that the 0.6 be removed from sections 12 and 13.

Under section 25, the sponsors corporation, we feel that we should have, either directly or indirectly, partnership in the non-profit, should have the authority to expand not just the pension plan where we receive a pension, but we feel that there should be something in there, maybe something that we started back in 1984, which was benefits for our retirees who lost their benefits when they retired and weren't able to buy benefits anywhere else. We were able to step in and find something, but we felt that if the act was changed, then maybe OMERS could take that over in partnership with us, and then retirees could receive benefits. Once they lose the benefits, it's pretty tough. If you're healthy, that's fine, but if you're not healthy and you lose your benefits at age 65, that can be very difficult. We're asking that section 25 be amended to provide these other benefits.

Section 26—and you can see I'm not following my notes—we recommend that a retired member be added to



section 26. The reason that we're asking for another retired member on this is that we have, if you look at the pie on page 6, other retirees, 27% of the retirees in the plan. That's not counting the inactive or deferred members, which is 9%. So we have 27% of the members of the plan, and we have one representative with a voice and a vote. We feel that with 27% and with representation by population, we should have two. We met with the other major retiree groups, the police and the fire groups, and we feel that we should have one retiree representative with a vote for the NRA-60, which is the police and the fire, and one retiree nominated from MROO, which basically is a 65, but we also have NRA-60s as members of our organization. These are the reasons we think we should have two on that committee.

Also, if you go down to sections 40 and 41, it's the same thing, because we're not restricted to recommending only supplemental plans; we recommend that each benefits advisory committee contain at least one retiree representative. Here we're just asking for one because probably the police and the fire on their advisory committee would have one, because they're the ones who are looking for the supplemental plans, and we would be on the other advisory committee. We feel that we bring something to the table. I have been involved with the OMERS pension plan since the start and I was involved with the city of Hamilton pension plan when Paul Hickey started that. I also had an annuity, which was \$25 a month and has stayed the same all these years I've been retired. Of course, I started when I was 10; that's why I'm going way back to all of these other different pension plans. So we feel that there should be retirees on these committees.

On the sponsors committee, again we're asking that we have two retiree representatives, and it's for the same reasons as I said for section 26, that we would have one from the NRA-60 and one from the NRA-65. We sat down with these other groups and thought we could come up with this representation.

Section 45: We recommend that the administration corporation contain two retiree representatives with full voting status. As I said, right now we have one there, and OMERS are quite pleased, I think, with the representatives we've nominated for them. They've been an asset to the present OMERS board. We feel that should continue, but we should have two; again, one for the NRA-60, which is the police and fire, who pay more into the pension plan so they can retire five years early, and one for the NRA-65 or one from MROO. We do not suggest, as the bill is suggesting, that we nominate or elect these people from one group and then the next group and then the next group and the next group. We're suggesting that the NRA-65 or the MROO representative would circularize and get all the people together, and we would then pick a nominee who would be on the board.

Section 56: I talked about that earlier. This is the section that was going to be deleted if by three years' time we didn't have a proper governance model. We think that that should be gone because we really feel we

should have governance. Had we had governance in the past, some of these things that happened during the contribution holiday could have been ironed out, and we could have improved the pension plan instead of giving employers and employees a contribution holiday from our wages that we put into the plan.

I think I've covered them all. There's a lot more in the eight or nine pages that I have, but I wanted to highlight our feelings on the plan. As Fred said, sometimes you get a little bit choked up about this. I've been choked up about this because it's been a long time coming and I think we need it. Thank you.

**The Chair:** You've left just over two minutes for each party. Mr. Hardeman, you can begin.

**Mr. Hardeman:** Thank you very much for the presentation. I want to quickly go to the representation of the people who are on the pension now and their involvement. You mentioned in number 6 that sections 40 and 41 be changed so that the retirees would have a representative on each advisory committee in the supplementary plans. Do you envision that changes in the supplementary plan could affect retired people?

**Mr. MacLeod:** You can answer it if you want.

**Mr. Bill Winegard:** If I may. One of the misunderstandings—as we read sections 40 and 41, there's no reference to them being restricted to advice about supplemental plans. If that were the case, and this may be an amendment that the committee might like to propose, if that is the intent: My understanding about supplemental plans is that that's a going-forward basis, as the assistant deputy minister said, so there would be no role for retirees, whereas I think we believe that if it has to do with benefits in their entirety—supplemental or non-supplemental—a lot of our money is in there and makes those possible, so we would like to be represented in those deliberations.

1730

**Mr. MacLeod:** If I could add to that, we would be proposing that it would be somebody probably from the supplemental plan for the police, the fire and the emergency workers. It would probably be somebody from the NRA-60 group who would be sitting on that, because at this time they're probably the only ones who would get the 2.33 that they're asking for.

**Mr. Hardeman:** The other question, just very quickly, is about what seems to be the number one issue, the wording "former members." Is the difference between "former" and "retired" critical to your members? I'm from the country, and a retired farmer is a former farmer because, having been retired, he is no longer a farmer. I wonder if it's critical to you to have that changed. I don't have any view on it.

**Mr. MacLeod:** I don't think we would not sleep at night if it wasn't changed, but to be honest, we feel that we should be recognized. A retired farmer is still a farmer, even though he retired. When somebody wants to know something, they come to you; they don't go to the young fellow.

**Mr. Hardeman:** That was a slam, I think.



**Mr. MacLeod:** We feel that we've paid our dues. We are members of the plan, because if it weren't for retirees, you wouldn't have a plan.

**Mr. Hardeman:** I support you in the change.

**Mr. MacLeod:** Thank you. We appreciate that.

**Ms. Horwath:** My question would be if there's been any advice to government around changes in the description of "former members" or, as they would prefer to be called, "retired members." Is that something that's possible or is there some kind of legal reason that that's not possible?

**The Chair:** Mr. Duguid, did you want to answer that?

**Mr. Duguid:** Sure. I can give you a very quick answer. Technically, maybe there is some way they can make it possible. I don't know. I know that the attempt is to be consistent with the Pension Benefits Act. So it's a case of trying to be consistent with all the other legislation.

**Ms. Horwath:** Thanks.

I was wanting to ask a question around the second point in your executive summary, around the removal of the 0.6% minimum. Can you tell me if you've talked to any other stakeholders about that idea and what kind of interest there is in that?

**Mr. MacLeod:** Do you mean the stakeholders in OMERS? We've talked about that. I hear OMERS is proposing that we drop that; at least, I thought that in their presentation. We feel it takes away the bargaining to improve the pension plan, because the majority of our members are probably members who make less than the YMPE, and this 0.6% affects the YMPE, because your pension is based on 2% times the number of years of service times your best 60 months, but minus the 0.675%, which it is right now. We think it should be down where the other pension plans are.

**Mr. Winegard:** If I might add, it's a benefit improvement which benefits everyone in the plan. Regardless of whether it's a supplemental plan or not, it benefits everyone. We also had support—as the president said, when we met with the other retiree organizations in OMERS, they all agreed that this was something that was the first priority for improvement to the plan.

**Mr. MacLeod:** If I could just add to that, because I glossed over my notes here. We were recommending that they add to section 26 that retired members also be given that increase, if a benefit is made, and that that increase be effective from the date of the change forward, as well as for the new members.

**The Chair:** Thank you, gentlemen. Thank you for being here. Oh, I'm sorry. I saw no action on this side so I didn't think you had any questions. Ms. Matthews.

**Ms. Matthews:** Thank you very much. First let me say I'm pleased that you support the idea of devolution. It's good to have that support from your folks.

I do have a question, though, about the CPP offset. I wonder if you could expand a little bit on that and tell us what impact the change you're recommending would have on your members.

**Mr. MacLeod:** The CPP offset is something most people don't realize when they're calculating their

pension. A pension is based on 2% times the years of service times their best consecutive 60 months. When people retire early, they get that 2% increase because there's a bridge benefit in there. When they hit age 65, all of a sudden their pension is reduced by the CPP offset. You could be retired for five or 10 years and have the benefit of this bridge benefit and be spending accordingly—maybe get a nicer condo or something like that—and then, all of a sudden, the month you hit 65, OMERS tells you your pension's going to be reduced by \$500 a month, or something to that effect, which is the CPP offset.

So the smaller the number, the larger a pension it will be. If we had it at 0.5%, then instead of it being reduced by \$500, it may only be reduced by \$300 a month. It's something the pension is based on, but it's something people don't realize until they hit age 65. During the contribution holiday, a lot of people went early because the penalties were reduced and the 90 factor was reduced, but once they hit age 65 they're going to lose out. They're going to find all of a sudden that they've got to change their spending.

At one time, when the CPP offset was there, it was put in to accommodate the OAS—the old age security—which is about \$450. At that time, when the CPP offset came off and you had your old age security, it was about the same, but that's not the case any longer. The old age security hasn't escalated as the CPP has, so therefore it's a penalty for the retirees. If it could be reduced to 0.5%, then these people would have a little bit more spending money when they retire.

**Mr. Winegard:** I think it's important we reassure the committee also that this is not one of the safeguards that we appreciate having been built into the bill to ensure the financial integrity of OMERS, and that we recognize that, in accordance with the other sections—section 15, I think—the 1.05 the assistant deputy minister was mentioning is not something that can be done at any point; it would have to be a surplus in the plan, which would enable this then to be considered by the sponsors.

**Mr. MacLeod:** That it would go forward, and not retroactively.

**The Chair:** Thank you very much, gentlemen, for your deputation.

#### CANADIAN UNION OF PUBLIC EMPLOYEES ONTARIO

**The Chair:** Our next and last deputation is the Canadian Union of Public Employees, CUPE Ontario, Mr. Sid Ryan.

**Mr. John O'Toole (Durham):** Chair, if I might ask a question of the researcher, I'd like to have from the research group a report indicating the change in life expectancy in an actuarial sense. There's a report on that that says life expectancy has increased. It would address some of the retiree benefits. There is a report. Could we? Thank you.

**The Chair:** OK. Welcome. Thank you for being here.



**Mr. Sid Ryan:** Good evening. I appreciate the opportunity to make a presentation.

**The Chair:** Can I just ask that, if anyone else besides you is speaking, you identify them.

**Mr. Ryan:** I was going to identify them anyway.

**The Chair:** Great. When you begin, you'll have 20 minutes, OK?

**Mr. Ryan:** Thank you. Darcie Beggs is from our national office and she's a pension expert. Antoni Shelton has been working on this file for quite some time. I've only got 10 minutes. I'm going to get right into it.

**The Chair:** You actually have 20 minutes. You can use all 20 minutes if you want. I'll give you a warning when you get close, if you like.

**Mr. Ryan:** OK. I hope you're taking all this time off the clock that you're talking there.

**The Chair:** I haven't started your timing yet, Mr. Ryan, but I could.

**Mr. Ryan:** I appreciate that. Time is precious.

**The Chair:** You should start.

**Mr. Ryan:** OK. Thanks. I just want to tell you, first off, that we have a technical brief that we have delivered to you already. I've got cards here representing 10,000 signatures from our members—active members and retirees—who are absolutely incensed at the way the Liberal government is handling these discussions, these negotiations, and in fact the brief itself.

There are many technical areas of this brief, such as the corporate model versus the trust model, the dispute-settling mechanism, duties and responsibilities of the corporate sponsors committee and the admin corporation. I'm not going to get into all those details. We can talk about them later if you want, but for now I want to talk about some of the areas that we have some really serious concerns about.

1740

I will say this much: To use an old Irish expression, the minister was spinning you a yarn a few moments ago about the corporate model versus the trust model, because I can tell you that there's only one pension plan that is jointly governed in this country, never mind in this province, that uses the corporate model, and that's the teachers. Every other jointly administered pension plan actually has a trust model, not the corporate model. So he was spinning it a little bit there for those members of the committee who are not terribly familiar with all our pensions.

I want to say that when Dalton McGuinty got elected, I was in his office within two or three weeks talking to Dalton about this very issue. We said to Dalton McGuinty at the time that what we wanted was a table—that's all we asked for from this government—and said, "Allow the unions and the employers of this province to do their job and let us negotiate what a governance model will look like for our pension plan." That's precisely what we've done in British Columbia, Alberta and every other province where we've got jointly trustee plans. We sat down and negotiated what the plan would look

like. We never asked for a prescription. We never asked for Bill 206. We never asked for government to come in and tell us what should be in our pension plan. We're paying for it and we should be allowed to freely negotiate it.

The first problem we've got is these public hearings, which have got six hours of hearings, and there are 360,000 plan members. In every small, tiny hamlet, town, village and city across this province, there are people who are impacted by what's going on here today and you only have hearings in Toronto. I know you sometimes feel that the city of Toronto—no disrespect to Toronto—is the centre of the universe, but there are a lot of people out there, outside of this city, who would dearly love to be able to come here and make some presentations, because what you're doing dramatically impacts upon retirees and future retirees in this plan.

I want to get into it right away. At the end of the day, what really matters—let's blow the smoke away from everything—is the pension promise. What will pensioners receive and what can those who are part of the plan expect to receive in terms of benefits down the road? Here's what your government is doing to retirees and to my plan members with this legislation. I'll give you an example to explain it quite easily, because I know people get confused about these accrual rates, and I notice numbers being kicked around.

Let me preface my comments by saying that OMERS is one of the worst pension plans in Ontario when it comes to paying the pension promise. By that, I mean it delivers the least amount of dollars into the pockets of retirees of any other pension plan in the public sector, bar none. The reason for that is that the accrual rate is set at 1.325%. The teachers' is at 1.55%, and there are small segments of very privileged workers—we talked about a lot of them here this afternoon—the police and the fire, who are actually talking about moving their accrual rates up to 2.33%. What does that mean in terms of a pension? I'll give you an example.

Lucille Kehoe is a retiree. She is 69 years of age. She lives in the city of Oshawa. She was a school board worker in the Durham school board, in the public sector, for 30 years. She is retired and because of this accrual rate that's in place for OMERS, her pension is \$1,100 a month. If Lucille was working in the hospital down the street, for instance, and she was part of the hospital pension plan, and she spent that same 30 years in the clerical position she was in in the school board, doing exactly the same work for the same number of years, paying exactly the same amount of money into that pension plan, out of the HOOPP pension plan she'd be taking home nearly an extra \$200 a week or \$2,400 a year, for exactly the same payment in. That's why we say this OMERS pension plan is one of the worst pension plans in Ontario.

What your government has done is you have brought in legislation that puts a cap on that accrual rate. The maximum we can negotiate is up to 1.4%. It means that people like Lucille Kehoe and others will be forced into a life of poverty and we have no means of moving her out



of that poverty trap she's in, as a result of what you're doing with this legislation.

The reason is—you take a look at it and it's very simple—you've put this 1.4% cap on and you say we cannot negotiate that, but at the same time you're saying to the police and fire, who already have a Cadillac of a plan and now you want to move it into a gold-plated plan, "We're going to give you the ability to negotiate further improvements over the Cadillac plan you've already got."

The language that's in this bill—you hear a lot about cross-subsidization. There is not one single sentence in this legislation that protects my members, the lowest-paid workers in this OMERS system, from cross-subsidization. The minister can talk all he likes, and the technical brief you got a few moments ago may refer to it, but there is not a single sentence, no clear and concise language in that legislation, that prohibits cross-subsidization. So what you're saying to my members is, "You cannot negotiate yourselves out of poverty. You cannot increase your benefits or improve your pension plan, but the police and the fire can jack theirs up to 2.33% in terms of accrual rate, moving that pension plan from Cadillac to gold- to diamond-plated, if you ask me, and then you're saying to the lowest-paid workers in the system, "You're going to have to pay for it," because you haven't put the language in there to protect them.

In terms of those supplementals, will they apply to CUPE? No, because you also put a cap in that says that any benefits CUPE would negotiate, or those other unions outside of police and fire, have a half of a per cent of a cap placed on them as well, as a result. In other words, we cannot go in and say, "We want to negotiate a supplemental." We would be unable to, because you cannot get a supplemental with a cap of only half of a per cent. So we will never be able to move our members into the stratosphere where the police and the fire are at. We'll never be able to move them into where even the hospital workers are at, or the workers' compensation or my pension plan or the Ontario hydro pension plan. We'll never be able to move them.

I did a little quick study before I came here just to check out some stats. Do you know that \$1,100 a month that Lucille is earning? In the city of Oshawa, where she lives, the cost of living, the poverty level is around \$1,500 a month. In Gerretsen's own Kingston, it's \$1,400 a month, and in McGuinty's Ottawa, it's \$1,600 a month. What do you say to those CUPE members, those retirees who are members of the OMERS pension plan in McGuinty's riding, that you are now handcuffing the union to say, "You will never have an opportunity to take your members out of poverty"? Even if we have a massive surplus like we did a couple of years ago—there was \$6 billion of surplus in this pension plan. Don MacLeod, who was here a few moments ago, a 79-year-old retiree from the city of Hamilton speaking on behalf of MROO, do you know what he got out of that \$6 billion? Do you know how much of a weekly increase he got? It was three bucks. And he was very lucky, because

Don had a high-paying job in the city of Hamilton, relative to the other members in our union. Lucille Kehoe got zero—zilch, she got—out of \$6 billion.

What we're saying to you is, give us an opportunity here to negotiate these workers out of poverty, and let them retire with dignity and a sense of respect and a decent pension plan. You've brought in legislation that's playing games with the highest-paid workers in the system, police and fire, who, Lord knows, don't need anything else. I don't know of one cop in this city and one firefighter in this city who has retired into poverty, but I can tell you thousands have retired into poverty from our union. That's what we're asking you to change.

You want to take a look at police and fire, but let's take a look at the paramedics who belong to our union as well. What has this government got against the Canadian Union of Public Employees? Why aren't the paramedics allowed in to be able to share in this largesse that the police and the firefighters are able to share in? Is it because maybe Dalton McGuinty didn't sign a secret deal with CUPE before the last election and he did with the firefighters? Is that what it's all about, living up to a commitment to the wealthiest people in the plan at the expense of the rest of them? That's not on. That's why we've got 10,000 signatures here from retirees and others across this province telling you that this is not on.

Don't think for one second that this is going to go away, that you're just going to pass this legislation in the dead of night with six hours of hearings, and somehow 360,000 members and 100,000 retirees are just going to go away and say, "OK, we lost that battle." That ain't happening. I'll tell you this much: Brian Mulroney learned the lesson; he learned the lesson of grey power. This government is going to learn the lesson of grey power. You're going to find these people out on that lawn at Queen's Park. You're going to find them in every single riding where we're running a campaign against the Liberals for what you're doing to the retirees of this province.

This is not about fairness and this is not about the devolution of a pension plan down to the members to run, because if it was, you would not be bringing in legislation that restricts our ability to do what we earn a living doing; that is, negotiating collective agreements and improving the lives of our membership. That's all we're asking this government to do. Don't get in the way of that by playing politics. I know that Roger Anderson, the unelected chair of Durham region, is running a campaign out there—of course he is—to try to prevent the lowest-paid workers in the system—maybe, if Roger Anderson is listening in to this program, he should look around at his \$157,000 salary. He's not going to retire into poverty, but the people he's trying to screw around are the people who are working in the municipalities, who are working in the Durham region, his employees. We're trying to move those folks into a meaningful retirement.

In addition, what kind of game is the government playing when it comes to CUPE? We've got 45% of the plan members on the employee side of the house. When



it comes to the administration corporation, AMO, which you could argue is a comparable organization to CUPE on the employer side, they get three seats on the administration corporation and so does CUPE—sorry, on the sponsors corporation. Which one is it?

1750

*Interjection.*

**Mr. Ryan:** Yes. But when it goes to the sponsors corporation, we get two. We're saying, "Wait a second, this just doesn't make sense." Why would we get two seats? Firefighters, with 4% of the membership, get one seat; police officers, with 10%, get one seat. So between the two of them, they've got 15% of the plan members and they get two seats. CUPE's got 45% of the plan members and we get two seats. Where's the logic in that? Why can't we have fairness and representation by population? Why would you want to be going out of your way to intentionally stick it to the lowest-paid workers in the system?

At least give us a fighting chance when we sit around the sponsors corporation and the administration corporation. Allow us at least to be able to represent the percentage that our members make up in the pension plan. Allow us to put up a fight and try to move them out of poverty. Why play games like this with the politics behind the scenes?

These individuals who were here earlier on from OMERS, we've been fighting them for 20 years. That \$6-billion surplus that I talked about a few moments ago was primarily driven by those bureaucrats, who said, "No, let's have contribution holidays," and they frittered the \$6 billion away in questionable investments and contribution holidays, to the point that people like Don MacLeod got \$3 a week. What we're saying is, don't be listening to these individuals.

By the way, we have them in the courts. This organization has been investigated by FSCO, and you're now turning our pension plan over to these folks based on a brief that the board of OMERS submitted to you in 2002, which he said had broad support. It had zero support. The employers absolutely killed that report. They said, "We don't support it." I was at the joint stakeholders' meeting. All of the unions said, "We don't support it." Yet Gerretsen still comes in here today and spins another yarn, telling you that it had broad-base support when it did not. Those same bureaucrats here, who we now have in the courts and who are being investigated by FSCO—you're handing our pension plan back over to them.

We will never be able to negotiate our members out of poverty if this continues and if this bill stays the way it is. I'm imploring you: Take a serious look at the issues we're raising here today, take a look at our brief and don't consign my membership to a life of poverty because you want to play politics and live up to a commitment that McGuinty made, inappropriately, to the firefighters before the last election. If McGuinty wants to cut a deal with firefighters, then cut a deal with firefighters, but don't play politics with my members and the retirees in this province. That's not acceptable.

The last thing I want to talk about is the supplementals. In term of the supplementals, there is no concise and clear language, and that has got to be in there. This would be a travesty of justice if it turns out that the wealthiest people in this pension plan are now being subsidized by the lowest-paid. That's what this government is doing with the way this legislation is constructed. I ask you to put that clear and concise language in. Don't listen to the bureaucrats when they tell you that it's there—it is not. I defy anybody in this room to point out to me the clear language that protects that plan.

In that regard, I can see where AMO is coming from. They don't see the clear language either that protects the rest of the plan members. They're coming at it from a different angle. They're looking at it and saying, "Oh, this is going to increase taxes for taxpayers." But from our perspective, whatever the taxpayers pick up, my members will also pick up the same amount, and it would be grossly unfair to the lowest-paid workers in this pension plan to ask them to have to pick up that load. That needs to be tightened up.

I guess that's basically it in terms of what I've got to say, in my opening remarks anyway. Maybe we'll open it up for questions. I would ask you to read that technical brief, because it goes into a lot of areas that I don't have time to go into here today.

**The Chair:** Mr. Ryan, you've left about a minute and a half for everybody. Mr. Hardeman, are you beginning?

**Mr. Hardeman:** Thank you very much for the presentation. My question is to the parliamentary assistant. I'm just wondering if we could hear from the government side what the intent was of capping the rate in the bill, as was pointed out by Mr. Ryan.

**The Chair:** Mr. Duguid, did you want to answer that question?

**Mr. Duguid:** I don't think there was an intent there on the side of the government. It's one of the things that has come forward in terms of recommendations that would have been concerns about the future integrity of the plan. It's probably considered a safeguard. We have heard concerns raised about that, and we're certainly looking at those concerns, but I can only assume that the recommendations, as they came forward, would have come forward on that basis.

**Mr. Hardeman:** I'm just saying the minister's comments were that we shouldn't worry about the contributions because both sides in the negotiations have to pay it. We shouldn't worry about it because the negotiations will even it out. In this case, why are we saying that it has to stop at a certain level for some but not for everyone?

**The Chair:** Mr. Hardeman, do you want to use your time asking the delegate questions rather than Mr. Duguid?

**Mr. Hardeman:** Not particularly, no.

**The Chair:** OK. You're running out of time. This is probably going to be your last question.

**Mr. Hardeman:** That's fine. Thank you.



**The Chair:** Do you have no more questions of Mr. Ryan?

**Mr. Ryan:** That was an excellent question, and I'd love to hear an answer. It begs an answer.

**The Chair:** Mr. Ryan, we're here to hear your questions and answers. We've heard your deputation. This is an opportunity for the opposition to ask you questions.

**Mr. Hardeman:** From the presentation, that was the number one issue in it, and I was just wondering if I could get, for my personal satisfaction, some handle on why we have that figure in the bill, if there is an explanation for it.

**Mr. Duguid:** I'm not sure how I can explain it in any other way, other than that it was a recommendation that would have come forward as one of the safeguards for the integrity of the plan into the future. Again, it's something we've heard about from a number of groups and that we're taking a good look at to see whether in fact that is the case. I would assume that would have been the reason for that recommendation from the beginning.

**Ms. Horwath:** My question is more of a philosophical one than a specific one on any of the issues that you've raised, and that is whether or not CUPE is of the opinion that Bill 206 is able to be amended to the point where your membership will be able to find some support for it. You have some very specific points. I think they are extremely well researched and well thought out. Considering your initial remarks in regard to the process that you're very displeased with and how we got to this point so far, do you think this bill can be amended to the point where the members you represent are able to feel that it meets their needs in terms of a pension system that they can benefit from in the long run?

**Mr. Ryan:** I'll put it this way: I've been fighting for 20 years for the devolution of this pension plan and I'm so disappointed that after that 20-year battle, what comes before us is a document that we can't support. Is the bill fixable? I believe it is. I think if they address the questions of the handcuffs they're placing on us as a union to negotiate benefit improvements for our members and let both sides go into free negotiations, free collective bargaining, if you will, and decide what the level of benefit will be for our members, that's one area that could be addressed quite easily. You don't have to put those caps in place that prevent us from taking our members out of poverty when they retire.

The responsibility, for example, of the sponsors corporation meeting once every three years—what they're doing is so ridiculous. It's like saying to any government, to the Ontario cabinet, for instance—and that would be like the sponsors corporation—that the bureaucrats will decide when the cabinet gets a chance to meet. That's precisely the analogy you can draw from this. They're saying that the administration corporation is the one that will decide when the sponsors corporation gets to meet. We get to meet once every three years to negotiate benefits but there's absolutely no oversight of the sponsors corporation over the admin. corporation, and

that just makes absolutely no sense whatsoever. That needs to be fixed. That would not be allowed in corporate Canada and it wouldn't be allowed in the Ontario government. You can't have the bureaucrats telling the sponsors corporation or telling the cabinet, for example, when and how often you can meet. It makes no sense.

Rep by pop: clearly to goodness that's a basic principle that we should all live by in a democratic society. Surely we can decide that if we've got 45% of the membership, we should at least have 45% of the seats on that board. That's not terribly difficult to do, unless you want to play politics with us, and that's what these Liberals are doing: playing politics.

In the supplementals—you've got to take the supplementals.

**The Chair:** Mr. Ryan, can you wrap up? Thank you very much. From the government side, Mr. Duguid.

**Mr. Duguid:** Just a few comments. First and foremost, to respond to the issue of "playing politics": I think playing politics is something you do when you tell people something to get them incensed that may not in fact be the case. I bring your attention to section 14 of the bill. There may well be some amendments that can clarify this even further, but it's very clear that the government has no intention of allowing rebound costs to be projected to any of the members of the primary plan. To suggest that CUPE members would somehow end up paying for the supplemental benefits or any changes with regard to supplementary plans is absolutely misleading and incorrect.

The section states: "In determining the required contribution rate for the primary pension plan to be paid by the members of the primary pension plan who are also members of a supplemental plan and by their employers, the actuary shall take into account the likely impact of the benefits provided by the supplemental plan on the required contribution rate that would otherwise be payable."

Now, I'm not a lawyer. There may be ways to tighten that up and make it even clearer, but I can assure everybody here at committee today that it's the government's intention to ensure that in fact members who are outside of those supplemental plans don't end up paying in any way in terms of rebound costs for those who do obtain those supplemental plans.

**The Chair:** Thank you. You've exhausted your time.

**Mr. Ryan:** I think I—

**The Chair:** I'm sorry, Mr. Ryan, he's exhausted—

**Mr. Ryan:** Excuse me, please. I do deserve at least to be able to answer him.

**The Chair:** I'll give you 30 seconds to respond.

**Mr. Ryan:** I appreciate that Mr. Duguid may not be a lawyer, but really, I am a negotiator and I know weasel words when I see them. You could drive a Mack truck through these weasel words where "the actuary shall take into account the likely impact of the benefits provided by the supplemental plan." Give us a break. Do you honestly believe that that says that the main, primary plan members will not be supporting a supplemental plan? It does not. It doesn't even come close. That is not

language that will be sustainable by an arbitrator, keeping in mind the process you've set up that goes into the arbitrator to make a ruling. In this particular case, that would never stand up in front of an arbitrator. If the employer was to argue that the plan members at the low end of the income scale have to pay for this supplemental, I guarantee you that the employer would win that argument and my members would be left holding the can. Those are weasel words, if ever I saw them. That is not clear and concise language.

**The Chair:** Thank you, Mr. Ryan. We appreciate you being here today. Thank you for your deputation.

**Mr. Ryan:** Thank you very much. What do I do with these 10,000—

**The Chair:** You can leave them here and our clerk will take them for you. Thank you for coming today.

I'd like to thank all the witnesses. I'd like to thank Minister Gerretsen and his staff, the committee and the ministry staff for their participation in the hearings. This committee now stands adjourned until 4 p.m. on Wednesday, November 16.

*The committee adjourned at 1802.*





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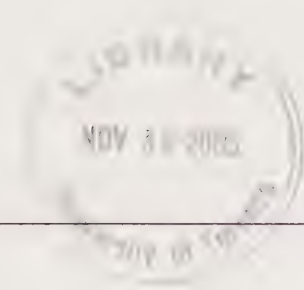
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# Official Report of Debates (Hansard)

Wednesday 16 November 2005

# Journal des débats (Hansard)

Mercredi 16 novembre 2005

**Standing committee on  
general government**

**Ontario Municipal Employees  
Retirement System Act, 2005**

**Comité permanent des  
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**Loi de 2005  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 16 November 2005

Mercredi 16 novembre 2005

*The committee met at 1600 in committee room 151.*ONTARIO MUNICIPAL EMPLOYEES  
RETIREMENT SYSTEM ACT, 2005LOI DE 2005  
SUR LE RÉGIME DE RETRAITE  
DES EMPLOYÉS MUNICIPAUX  
DE L'ONTARIO

Consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act /  
Projet de loi 206, Loi révisant la Loi sur le régime de  
retraite des employés municipaux de l'Ontario.

**The Vice-Chair (Mr. Vic Dhillon):** Good afternoon. The standing committee on general government is called to order. We're here today to continue the public hearings on Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act.

ASSOCIATION OF MUNICIPALITIES  
OF ONTARIO

**The Vice-Chair:** The first presenter is the Association of Municipalities of Ontario. When you come up, I'd like you to state your name for the purpose of Hansard. You have 20 minutes. Any time remaining will be divided among the three sides.

**Mr. Roger Anderson:** Good afternoon, Mr. Chairman. My name is Roger Anderson. I'm the president of the Association of Municipalities of Ontario. To my right is Pat Vanini, our executive director, and to my left is Brian Rosborough, our director of policy. In case you don't know, I'm also the regional chair of the Regional Municipality of Durham. I'm pleased to be here today.

I'm here today to represent more than 380 of our municipal members who are OMERS employers. They are profoundly concerned about the impact of Bill 206 and the potential for significant costs to be funded by municipal taxpayers.

OMERS plays an important role in investing in public assets, from energy generation to hospitals to other infrastructure, and the government of Ontario acknowledged this in part of its 2005 budget speech: "This government is exploring ways to accelerate our infrastructure plan. We are looking at ways to encourage Ontario's pension plans to invest more in building Ontario's infrastructure rather than investing their money abroad."

Yet never once in the provincial budget did the speech mentioned OMERS' devolution or new benefit structures, and Bill 206 has seemingly never warranted specific reference in any throne speech. For the sake of Ontario taxpayers, our shared constituents, and to ensure the prosperity of Ontario's communities, the government—and dare I say this committee—must proceed, as far as we're concerned, very carefully.

We fully recognize that the province has goals that it wants to achieve. However, improving OMERS governance needn't require the radical restructuring of the plan. The status quo, with minor modifications, was the preferred solution back in 2002, as it should be now, because you just don't tinker with a \$36-billion pension plan affecting over 355,000 employees and over 900 employers without being very careful and exercising due diligence.

When devolution was originally put forward, the association's board recognized that there were some legitimate concerns that needed to be addressed within the organization; in particular, improvements to streamlining appointments and efficiencies in decision-making. However, today the ground has shifted.

When devolution was first proposed, the OMERS plan had a surplus and a contribution holiday. Today it has a \$2.5-billion deficit, necessitating a 9% increase in contribution rates or, more importantly, \$137 million in new municipal expenditures, with similar increases projected for future years. This is a new \$137-million burden on property taxpayers in the province of Ontario, and not one penny—not one single penny—will find its way into any service improvements.

AMO maintains that the province of Ontario is needlessly rushing in to reform one of Canada's most important pension funds. A wholesale restructuring of something as complex and as important as the OMERS plan ought to be carried out by qualified pension experts, who are few and very far between. We can verify that because we had to find them to prepare any credible analysis of this bill. It was AMO, as a matter of fact, that had to ask OMERS to undertake a financial analysis on matters contained in the proposed legislation. No one else seemed interested in this, including the government, and not even the unions.

As one elected official to a committee of others, all of whom in this room I respect tremendously, I would urge you to ask yourselves if you feel you have the experience and the knowledge needed to ensure that through a



clause-by-clause review of this bill you can serve the best interests of the thousands of Ontarians who depend on OMERS for their retirement. If the government is determined to proceed, we all owe it to the citizens throughout this province to take the time to get this bill correct.

However, I believe that the legacy of this bill as it reads today will be a legacy of skyrocketing property taxes, tax rates driven by arbitrated settlement decisions as opposed to negotiations, and unknown economic impacts that may be literally impossible to reverse. This legacy will be the legacy of the McGuinty government, the way downloading was the legacy of the Harris government. Bill 206, as it is currently constructed, fails on governance, fails on cost impact and fails on autonomy, with significant repercussions for all of us.

The government is fond of saying that OMERS is just like other pension plans and it should be devolved. Well, it is not. OMERS has an extremely diverse number of employees and employers, including municipal governments, school boards, libraries, police and fire services, children's aid societies and even electric companies. If devolved, OMERS would be the only pension plan in Ontario with such diverse employer and employee groups that has no provincial involvement whatsoever. To be fair, OMERS should be compared with similar municipal plans in other provinces, and not to other public sector plans in Ontario. I would refer you to the pension comparison chart attached to my notes as Appendix A.

Bill 206 proposes a sponsors corporation composed of equal employer and employee group memberships. Yet the proposed composition of this governance structure is not reflective of the group membership itself. Almost 20% of active memberships are management, union-exempt or non-unionized employees, yet these valuable plan members don't have a permanent seat on the sponsors corporation. Its representation equals more than 5% police and 10% employees combined, and about half of the CUPE component, at 45%.

The challenge of fair representation also calls into question the proposed decision-making structure of the sponsors corporation using a simple majority vote. Only one vote from a dissenting member of an employer or employee group could result in a decision being affirmed that is opposed by all other employee and employer members from that group.

Other devolved pension plans, such as the hospitals pension plan, the Ontario teachers' pension plan and the BC municipal plan, require unanimous agreement of the appointed parties to implement a fundamental change to the plan. If devolution is truly the desire of the government of Ontario, then AMO believes that unanimous agreement or total consensus must be required of the sponsors corporation for all key decisions.

The government has characterized Bill 206 as an autonomy bill, yet Bill 206 is not offering autonomy at all. It is dictating detailed requirements such as supplemental plans and a permanent prohibition against the introduction of defined contribution plans. In fact, it is

the province that will make direct appointments to the initial sponsors corporation and administration corporation.

The OMERS board itself has conducted a rigorous review of Bill 206 and strongly recommends that the bill be amended on several fronts.

I read recently that OMERS has agreed to invest \$4.25 billion in the Bruce Power plant, an important example of private investment in a major infrastructure project for Ontario. This is good news for a province where energy security is a daily concern. I challenge committee members to consider this important investment carefully and to ask themselves, "Would this investment actually have been approved if the Bill 206 governance structures were in place?" We sincerely doubt it. Submissions that the OMERS board has made to this committee validate our doubts.

#### 1610

Municipal governments have a wealth of first-hand experience from when ambulance and social housing were devolved to the municipal sector. Neither came with transparent due diligence or consideration for adequate transition time. OMERS' devolution is absolutely no different. If it proceeds, the government must, at a minimum, give sponsors lead time of 12 months following royal assent to prepare to take on new sponsorship responsibilities.

With respect to dispute resolutions, it is worth questioning why the province would want to apply a collective bargaining tool to the management of a \$36-billion pension fund. Attempts to negotiate an environment that permits binding arbitration have not worked, and essentially put governance into the hands of an arbitrator. AMO cannot support such a dispute resolution model, and it is an appalling means to supposedly protect the public interest of Ontarians. I would be shocked if any arbitrator wants that degree of responsibility. In essence, an arbitrator could have a significant say in the municipal tax rate without any regard for tax increases, without any regard to the reduction of staffing and services required to accommodate the decision and without any accountability to the public, the taxpayers or the employees.

If an arbitration decision on supplemental benefits is rendered at the sponsor level, then the likelihood of arbitration at the local level will happen with great ease. Current arbitration decisions take decisions elsewhere and replicate them, as is the case in arbitrator Snow's decision. Even he gave up on the retention pay as a unique situation. His commentary is attached in appendix B, and I urge you to read it. If this bill is about quality negotiations, as Minister Gerretsen says, then there should be no arbitration scheme and this provision must be removed.

Supplemental benefits of Bill 206 would provide for additional pension benefits such as enhanced early retirement or an increased benefit accrual rate. It is even conceivable that an employee who changes employers over the course of their career would have, or could have,



access to several supplemental benefits under a number of collective agreements. Needless to say, the logistical challenges of supplemental plans are considerable and complex. All would have to be managed and administered by OMERS on behalf of approximately 900 employer groups, not to mention the anticipated significant increase in actuarial and technological costs. Early retirement benefits through supplementals will impact the base plan and will surely whipsaw across the province.

If the government is sincere about OMERS' autonomy, it must not impose any requirements on the sponsors corporation to consider supplemental plans. In a real autonomy model, these decisions would be left up to the sponsor corporation, not imposed in legislation. AMO asked for but was unable to receive from the province any financial analysis of the proposed changes in Bill 206. As a result, AMO did its own homework on these costs. First we asked OMERS, and they undertook at their cost a hypothetical analysis. We have since asked our members to do their own costing analysis based on the potential of supplemental plans. In most communities, it is estimated that such costs will result in a property tax increase of at least 3%. On a province-wide basis, that amounts to about \$380 million a year. Tax dollars directed to a devolved OMERS will sap municipal funds away from infrastructure and service improvements in every part of this province. Is it the desired intent of the bill to make \$380 million a year disappear out of the pockets of Ontario property taxpayers?

I can help you put that \$380 million into context. It is equal to half of the total new revenue that municipal governments in Ontario will receive when gas tax revenue sharing under Canada's new deal is fully annualized in 2009. It is more than the full amount of the annualized provincial gas tax revenue sharing for public transit.

Is it a clawback? No, it's not a clawback. It's not money to fund new provincial initiatives, and it's not money to fund new municipal initiatives. But it is \$380 million a year in new costs for municipal governments and property taxpayers to enrich retirement benefits in a system that is already the envy of public and private sector employees everywhere.

I would ask you to ask yourselves how many police officers we could hire with an additional \$380 million a year, or how many homeless people could be housed for that kind of money? What improvements could be made in Ontario's water and sewer infrastructure, roads and bridges or even transit? The city of London estimates that the potential tax impact would equate to almost \$50 more in taxes for the average resident. In London, a 1% tax increase alone is equivalent to hiring 30 more police officers. Imagine what else could be bought to improve the lives of taxpayers in London and elsewhere throughout this province.

Let me be clear: This 3% increase in costs does not include a pending 9% increase in contributions in 2006, estimated at a cost of \$137 million a year. It does not include potential increases in post-employment benefits associated with adopting supplemental plans. It does not

include sponsor start-up costs at an estimate of \$5 million to \$10 million. It does not include anticipated higher administrative costs, and it does not include the costs associated with the potential future extension of supplemental benefits to other emergency workers, such as our paramedics.

In its last budget speech, the province said, "We watched every penny. So the deficit is smaller. But it has not disappeared. Far from it. We are still working our way through a structural deficit that continues to threaten our ability to fund the public services that the people ... depend upon" The province may be watching its pennies, but according to this piece of legislation it is not helping municipal governments try to manage their pennies.

Bill 206 only adds more to the municipal structural deficit in a manner that is unaccountable and within a legislative framework that is terribly flawed and fundamentally wrong. Hasty implementation of such fundamental changes of this magnitude would be reckless and irresponsible. We implore the government of Ontario to accept the challenge of demonstrating that it has carefully completed and reviewed an independent and comprehensive analysis of these proposed changes with a view to unintended consequences.

Once again, I believe this government is about to decide what legacy it wants to create. The health premium will be easy to justify next to increased property taxes to enrich a pension system that is already the envy of most Ontarians.

This committee has given a bill that would fundamentally transform the \$36-billion OMERS plan only eight hours of public consultation. If the bill moves forward to third reading, as we anticipate, under these circumstances, without being returned to this committee for meaningful stakeholder consideration and input, this government and this committee may have a great deal to account for. I suggest that the onus is on you to get it right. The costs are staggering for municipalities.

**The Vice-Chair:** Thank you. There is a little less than two minutes, so I'm going to give all three sides about 30 seconds, if you can quickly ask your questions or make your comments, please.

1620

**Mr. Ernie Hardeman (Oxford):** We thank you, Mr. President, for the presentation. I just want to say this is very enlightening. When we started last Monday, the minister's comments indicated that the reason this is being brought forward is because there was so much request for it, that this had been asked for for a long time, and that everybody was going to be happy. So far, we haven't heard anyone who thinks that what is being done here will serve the purpose that it's intended to.

Again, I thank you for your presentation and hope that the government side is listening, particularly to make sure that we have more time to do it and that everything is ironed out much better than it is and we can get a piece of legislation that will work.

**Ms. Andrea Horwath (Hamilton East):** I have a question in regard to your presentation. You do append



the ruling by Mr. Snow. You don't append any of your assumptions, your evidence or your analysis as to what generates your figures in terms of the property tax increase. I'm wondering if I can get a copy of that analysis. It would be helpful.

**Ms. Pat Vinini:** We can provide that for you.

**Ms. Horwath:** Thank you.

**The Vice-Chair:** Any questions or comments?

**Mr. Brad Duguid (Scarborough Centre):** I just want to thank Mr. Anderson and AMO for their presentation. We have had discussions about this in the past. They put some thought into their presentation. There's a great deal of information here, and I thank them for that. I'm not going to quarrel with any of the numbers that they have at this time, but I would suggest that some of the numbers in here are speculative at best, given that they probably assume 100% take-up if this were to happen, which I think would be totally unrealistic.

**The Vice-Chair:** Thank you, Mr. Anderson, for the presentation.

**Mr. John O'Toole (Durham):** Chair, the report that was requested by the NDP would, I hope, be shared with all members of the committee on the background information on the tax implications?

**Ms. Vanini:** Shall we provide that with the report?

**The Vice-Chair:** Yes, that would be given to the clerk and shared with all three parties.

#### CANADIAN UNION OF PUBLIC EMPLOYEES, AMBULANCE COMMITTEE

**The Vice-Chair:** The next presentation is from the ambulance committee, Canadian Union of Public Employees.

Good afternoon. If I can ask you to state your names for the record, please.

**Mr. Michael Dick:** Michael Dick. I'm the chair of CUPE Ontario's ambulance committee. I'm also a paramedic working out of Durham region over the last 25 years. To my left is Mr. Joe Matasic, CUPE national representative assigned to the ambulance committee, and to my right is Antoni Shelton, EA to the president of CUPE Ontario.

**The Vice-Chair:** You have 20 minutes, and just like before, the time remaining will be shared among the three parties. You may begin your presentation.

**Mr. Dick:** First of all, I'd like to thank the committee for giving us this opportunity today to speak to you on Bill 206.

CUPE represents well over 2,000 paramedics in Ontario. From Windsor to the west, Kenora in the north and Cornwall to the east, CUPE paramedics provide service from one end of the province to the other, including right here in the city of Toronto. Our members are highly trained, dedicated professionals, many of whom have years of committed service to their communities.

Paramedics have some serious concerns with certain parts of Bill 206. First, we are concerned that the

proposed representation model is not truly representative. CUPE represents a large number of members, including paramedics throughout the province. The proposed representation structure would leave CUPE members, including paramedics, severely under-represented. We cannot accept that, as members of the largest stakeholder in the plan, we would be left with so little say on the future of our pensions.

We also have concerns regarding the proposed structure and administration of the plan. CUPE Ontario has presented these concerns to you in an earlier submission, so we will not repeat those concerns here today. Today, we'll be talking mainly about the portion of the bill specific to paramedics.

As some of you know, the federal government announced in its last budget that paramedics would be included in the public safety occupational group of the Income Tax Act. This designation is sometimes referred to as the PSO. Previously, the public safety occupation group consisted of police officers, correctional officers, commercial airline pilots, air traffic controllers and firefighters. The public safety designation is important because it permits pension plans to provide benefits that allow persons employed in public safety occupations to retire earlier without penalty. The purpose of the early retirement provisions for public safety occupations is to protect the safety of the public and the health and safety of the women and men in those occupational groups. The Canada Customs and Revenue Agency describes the reason for the provisions as follows:

"The more generous early retirement eligibility criteria for public safety occupations recognize work situations where the limitations associated with ageing are common and have the potential to significantly endanger the safety of the general public. These special rules are intended to assist employers who, out of concern for public safety, wish to encourage or require employees in these occupations to retire early."

It is well known that certain types of work becomes more difficult to perform as a person ages. Allowing people in public safety occupations to retire earlier is just good public policy. It protects the health and safety of the public while lessening the financial impact on those persons employed in public safety occupations.

Currently, OMERS has provisions that allow some members of the plan to retire earlier without penalty by virtue of the Income Tax Act PSO designation. These provisions are commonly referred to as "normal retirement age 60" or "NRA 60" rules. Up until the last federal budget, the only members of OMERS who were eligible for inclusion in the NRA 60 provisions were police officers and firefighters. However, with the change announced in the last federal budget, paramedics will now be eligible for inclusion in the NRA 60 provisions.

The need to include paramedics in the PSO occupational groups is widely recognized by those who are familiar with the work. The work that paramedics perform is of vital importance to the public and can sometimes have life-or-death consequences for people



who are in need of the service. However, the work can be extremely physically demanding and often requires a great deal of mental effort and concentration. From extricating patients in car accidents to starting intravenous lines and calculating drug dosages in the field, the work is both physically and mentally demanding.

As paramedics age, their ability to perform these duties can become diminished. This can be difficult for the men and women who perform the work, but more importantly, it can be dangerous for the public. This is why including paramedics in the public safety occupational group is good public policy and why paramedics should be included in the NRA 60 provisions of OMERS. This is also why paramedics deserve to have a voice on the supplementary benefits proposed in Bill 206.

In order to implement the Income Tax Act public safety occupational group changes, OMERS will need to be amended to include paramedics in the normal retirement age 60 group. We recommend that the plan be amended to include paramedics in the NRA 60 group.

Section 4 of Bill 206 permits the sponsors corporation to adopt supplemental plans for “either or both of those in the police and fire sectors, and for those in other sectors.” With paramedics included in the public safety occupational groups, there is no basis for separating paramedics from police and firefighters and there is no reason to exclude paramedics from section 4 of the proposed legislation. We recommend that paramedics be included in any section of the bill that addresses public safety occupation members.

Sections 40 and 41 provide for separate advisory committees—one for the police and fire sectors and the other for “other members.” One would presume that the need for a separate advisory committee stems from the separate rules as they relate to public safety occupation members. As with section 4, with paramedics included in the public safety occupational groups, there is no basis for excluding paramedics from the separate advisory committee. We recommend that paramedics be included on the advisory committee contemplated in sections 40 and 41 on the same basis as police and fire.

We’d like to thank the committee again for the opportunity to discuss our concerns, and we’d be available for any questions.

1630

**The Vice-Chair:** Thank you. Approximately four minutes for each side. We will begin with Ms. Horwath.

**Ms. Horwath:** Welcome. Thank you for your presentation. I’m wondering if you could tell me whether you’ve had discussions with the other safety occupations in regard to the comments that you have on the bill, and whether they’re in agreement with your position.

**Mr. Dick:** We haven’t actually approached those groups to get endorsement of our position at this time.

**Ms. Horwath:** You talked earlier about the fact that CUPE Ontario made their presentation a couple of days ago, that it’s your position that everything that they’ve raised, you are also in support of, and these are additional

issues that you want to see addressed in amendments to the bill.

**Mr. Dick:** Correct.

**Ms. Horwath:** OK. Were you here for the previous presentation?

**Mr. Dick:** Yes, I was.

**Ms. Horwath:** Has your organization discussed any of the issues that were raised by the municipal sector in regard to some of the concerns that they have in terms of supplemental agreements for safety occupations?

**Mr. Dick:** No, we haven’t.

**Ms. Horwath:** You have not—

**Mr. Dick:** With AMO?

**Ms. Horwath:** Yes.

**Mr. Dick:** Not at our level.

**Mr. Antoni Shelton:** Can I answer that? I just want to add that in terms of the supplementals, we have stated in CUPE Ontario that we do not object to supplementals as did AMO, but we do want to ensure that the basic plan does not pick up the cost of supplementals. In that sense, we are supportive of supplementals.

**Ms. Horwath:** OK. So in fact, the issue is the specific language around the cost of supplementals. I believe that the president of the union was indicating—I think he said that we could drive a Mack truck through the loopholes in the language that describe what it costs to prepare and administer supplementals. If I’m not mistaken, that was the position. That’s something that your group is quite comfortable with and understands the issue around that?

**Mr. Dick:** Correct.

**Ms. Horwath:** So at this point you’re not, in any way, in a position to remark or comment on the assertion of the previous group that municipal taxes will be increasing by 3% across Ontario as a result of this bill. Would you support that position?

**Mr. Joe Matasic:** Maybe I could answer that. I think we agree with the member that the AMO assumption is based on the worst-case scenario and is based on the presumption that the municipalities will not be able to negotiate effectively with their employee groups, and the outcome of those negotiations will be that the municipalities will totally capitulate to the bargaining agents and the total potential cost will be realized through that negotiation process.

**The Vice-Chair:** The government side.

**Mr. Duguid:** I want to thank the Ontario Paramedic Association for being here today and making this deputation—

**Mr. Dick:** If I can just correct you: We’re not associated with the Ontario Paramedic Association; it’s CUPE’s ambulance committee.

**Mr. Duguid:** Oh, you’re CUPE’s—my apologies. I want to just express to you that I think all members of committee respect the hard work that our paramedics do. We respect all the work that our front-line workers do—firefighters and police. There’s no question that the work of our paramedics is every bit as difficult, if not more so. Having had the opportunity to take a number of rides with paramedics in the past in my previous duties at the



city of Toronto, I know how difficult a job it is. I don't know if people realize how paramedics often don't even get a lunch. They're going constantly, not even getting a break. I just want you to know at the outset that we have a great deal of respect for your profession and the people you represent.

The second thing I want to mention as well is that the federal income tax changes have been made, my understanding is, after the legislation had actually been introduced, so this is an issue that I can assure you we are looking at. I know the minister has an interest in this as well. I don't know, and ultimately I can't presume what's going to happen here, but I can tell you that we certainly are going to take seriously the presentation that you've made and the input that you've given us, and we'll move forward on that basis.

I thank you for the input. I thank you for the presentation.

**The Vice-Chair:** The official opposition.

**Mr. Tim Hudak (Erie-Lincoln):** Gentlemen, thank you very much for the presentation. You may have seen the Hansard from the original day. I had asked a question about why paramedics were excluded, and it sounded like it's an open question, so hopefully this committee will hear from the other paramedic associations. I think you made a very strong presentation today.

If I followed your arguments correctly, you mentioned those of the PSO groups under the Income Tax Act: police officers, correctional officers, commercial airline pilots, air traffic controllers, firefighters and now paramedics; customs officers, I imagine, would be included under that.

*Interjection.*

**Mr. Hudak:** They're not included? OK.

So of those who are OMERS beneficiaries, the only ones who don't have access to supplemental plans under the legislation would be paramedics?

**Mr. Dick:** Right.

**Mr. Hudak:** And your view—to make sure I'm clear on your presentation—is that paramedics should actually be explicitly listed in the legislation, like firefighters and police are, as opposed to other groups.

**Mr. Dick:** Exactly, yes.

**Mr. Hudak:** In your presentation you said there are 2,000 paramedics that CUPE represents in the province of Ontario. How many paramedics who are part of OMERS are there altogether—a ballpark.

**Mr. Dick:** Close to 5,000. We represent probably close to 2,500, and there would probably be 5,000 in the province who would be in OMERS.

**Mr. Hudak:** You mentioned that everywhere firefighters or police are mentioned, paramedics should be as well. One of those areas that's a very important position is guaranteed membership on the sponsors corporation and on the administration corporation. Is it your view that paramedics should have a separate seat equal to the police and fire on those two corporations?

**Mr. Dick:** It would be nice, but I don't really think the numbers would dictate that. But we definitely should be named in the legislation and have part of that discussion.

**Mr. Hudak:** Do you see yourself, then, more so than under CUPE—I guess CUPE seeks separate paramedic representation on those two committees.

**Mr. Dick:** Yes, but like I say, CUPE is a big organization. There's a bunch of different classifications. If we were going to go through and have every classification have a seat, I don't think that's doable. It would be nice, but—

**Mr. Matasic:** Our view in general is that CUPE, as an organization and as the largest stakeholder in OMERS, is generally under-represented, and that definitely needs to be corrected in the legislation.

**Mr. Hudak:** In terms of the paramedic argument, the paramedic presentation that you're making, CUPE aside, what's the ideal structure of the sponsors corporation, if you see yourself being eligible for supplemental benefits like police and fire? Are you satisfied with the way the sponsors corporation is currently delineated, or would you like to see substantial changes to that?

**Mr. Matasic:** I think we would refer to the CUPE position in general. In terms of the representation, if I could just elaborate on that, we're very comfortable that if CUPE is given proper representation on the board, CUPE paramedics will be adequately or properly represented within that organizational structure. Our concern, as with CUPE Ontario's concern, is that CUPE is generally under-represented.

**Mr. Hudak:** How about the advisory committee for supplemental benefits? What's your view on how that should be structured?

**Mr. Shelton:** Mr. Hudak, that's what I was going to emphasize. Our presentation here today is unequivocally saying that the paramedics should have a seat on the supplemental advisory committee for the NRA 60. The principle in terms of CUPE overall with regard to the membership on the sponsors corporation is one of representation by population.

1640

**Mr. Hudak:** Have you heard any convincing arguments to the contrary? If you're all registered as PSO under the Income Tax Act, why the dividing line, with police and fire on one side and paramedics on the other? What's the counter-argument to yours?

**Mr. Matasic:** The addition of paramedics to the PSO designation under the Income Tax Act is actually very recent. It was announced in the last budget, and my understanding is that it was implemented in the Income Tax Act regulations just a couple of weeks ago, so it is very new. But we're very concerned that this legislation not be moved forward without actually having the OMERS regulations dealing with the NRA 60 provisions amended to ensure that paramedics are included in the NRA 60 group prior to this legislation being passed and prior to the change in the actual—

**Mr. Hudak:** So you've not heard any counter-arguments from government contrary to simply its timing on the Income Tax Act.

**Mr. Matasic:** I think an argument could be made that the change could have been anticipated prior to the actual



writing of this legislation, because the changes were actually announced in the last budget, but to be fair, the actual changes weren't implemented in the Income Tax Act regulations until just two weeks ago.

**The Vice-Chair:** You're time is up. Thank you, gentlemen, for your presentation.

#### ONTARIO PUBLIC SERVICE EMPLOYEES UNION

**The Vice-Chair:** The next presenter is the Ontario Public Service Employees Union. Good afternoon. If I could get your name for the record, please.

**Ms. Shirley McVittie:** I'm Shirley McVittie.

**The Vice-Chair:** You have 20 minutes, and any time remaining after your presentation will be divided up among the three parties. You may begin.

**Ms. McVittie:** First of all, I'd like to thank you for allowing us to make this presentation. We've been very interested in autonomy for OMERS for a long time. As you may know, OPSEU has worked very hard in the area of joint trusteeship in the OPSEU pension trust with the Hospitals of Ontario Pension Board and also the community colleges, so we think we have a lot of experience in joint trusteeship and working with other unions in multi-employer pension plans.

We have members in OMERS who participate in a number of different worksites. We have paramedics, similar to CUPE; we have members who work in children's aid societies, municipalities, property tax assessment, school boards and others. We're very interested in the new governance model that is being proposed for OMERS and that it be set up in the same way as the other major public sector plans in Ontario and governed by the same pension laws and regulations.

Under the proposed model, the sponsors corporation will have the responsibility that's currently performed by the government. It's our position that this new sponsors corporation must have an explicit oversight role over the administration corporation, similar to other pension plans, and that the two bodies that will be governing OMERS be subject to the same statutory and fiduciary requirements of the Pension Benefits Act and trust law.

A major concern for OPSEU is the proposals in the bill that deal with benefit limitations. We believe that in the new governance structure, in order to meet the needs of both the employers and the employees, the plan should be flexible and not have arbitrary limits set from the outset as to what can be negotiated. Although it might be hard to imagine right now, there will be a day in the foreseeable future when pension plans will have surpluses again, and we don't see the need to limit the actual benefit formula in the legislation so that it would be impossible in the future to increase the benefits, particularly the benefit formula for members who earn under the YMPE—year's maximum pensionable earnings—formula. Having that kind of limit would actually set OMERS behind the hospitals pension plan or the teachers' pension plan.

Another funding restriction that we'd ask you to look at is the fact that this legislation would require a funding excess of 5% of the going concern liabilities. Not that we're opposed to having a contingency fund or margins in the pension plan, but we don't see the reason to have it actually set out as a funding policy.

A third restriction on the ability of the sponsors corporation to meet the needs of both the plan members and the employer is in the constraints placed on an arbitrator, so that even if the members of the sponsors corporation could not come to an agreement on a benefit improvement, if it goes to arbitration there are limits on what the arbitrator is actually permitted to take into account.

Similar to the presentation prior to mine, we are also concerned about the paramedics and the fact that OPSEU has a couple of thousand paramedics who seem to have been neglected in this bill. We would like to see paramedics represented on the advisory committee or the sponsors corporation with respect to their benefits, and that they be eligible for the same early retirement rules and any supplemental plans, similar to the police and firefighters.

We also have a number of recommendations with respect to the composition of the sponsors corporation. One of the issues for OPSEU is the actual members of both boards, in that a principle for us is representation by population. The limit that has been set with respect to who has a permanent seat and who is in the other seat, we think, has an unfair impact on OPSEU. We have about 8,000 members and we are ranked with "others," some of which have six members or 22 members. We don't think that makes good sense in this new governance structure, so we are asking that there be a dedicated seat for OPSEU on both the sponsors corporation and the administration corporation.

We also think that the way the legislation is structured right now with respect to the other employers and the other employee groups is very cumbersome and complex and is not likely to work very well. We would rather see a new method whereby the groups could meet together and select their own appointees.

We also think that having a two-year maximum on the term of appointments will actually distract board members and be counterintuitive to this new governance structure. Because individual sponsors will be able to appoint their own appointees, they should be in charge of whether or not they will be reappointed or removed.

The administration corporation does not have a dispute resolution process, which we see in other pension plans, and we believe that there ought to be a similar one written into this new structure. We would also like to see a list of mediators and arbitrators established from the outset, because right now the suggestion is that if the parties couldn't agree on an arbitrator, it would be the CEO of the corporation who would make that decision, and that represents a conflict of interest in our minds.

As I said before, we would like to see the constraints on the arbitrator with respect to increasing contributions



be removed. We don't think it's necessary. There are a number of other items that the arbitrator has to consider, including prevailing economic conditions in Ontario and the overall financial state of the employers. We think there are good enough safeguards in there for municipalities and other employers such that it's not necessary to seriously limit the possibility of any future negotiations from the outset.

We would also like to see that the plan sponsors and employers appoint the members of both corporations from the outset. As I said, we would like a permanent seat on both boards for OPSEU.

Just a couple of other issues. We would like the bill to include a provision for future growth so that the sponsors would be able to determine whether related employers could join OMERS. Similar to CUPE before me, we also want to ensure that any supplemental plans not be subsidized by the basic plan. Thank you.

1650

**The Vice-Chair:** Again, there's about four minutes left for each side, starting with the government side.

**Mr. Duguid:** Maybe Mr. Lalonde, if there's time.

**The Vice-Chair:** Mr. Lalonde.

**Mr. Duguid:** Mr. Leal first.

**Mr. Jeff Leal (Peterborough):** Ms. McVittie, I want to thank you for your presentation. As a former municipal politician, do you believe that arbitrators, when they make decisions, should take into account a municipality's ability to pay?

**Ms. McVittie:** I do. I also think they should take into account the members' ability to pay. It's not necessarily so that any benefit improvement would cause a contribution increase, but other plans have managed to negotiate these types of situations without having an arbitrary limit.

**Mr. Leal:** We've all witnessed—we'll take the municipality of Havelock-Belmont-Methuen in my riding of Peterborough, which has a relatively poor assessment base, but arbitrators would come in and make decisions of 19%, 20% and 25% and then expect that municipality to try to pay that. That leads ultimately to huge property tax increases. I just want to get your comment on that situation, which crops up all through Ontario.

**Ms. McVittie:** I understand, but we're not suggesting removing the provision here that the arbitrator would take into account the ability of the employer to pay. We're just suggesting removing the 0.5 limit on the contributions.

**Mr. Leal:** But historically, no arbitrators in Ontario have ever taken into account the ability of a municipality to pay.

I'll leave it at that, Mr. Chairman.

**The Vice-Chair:** Mr. Lalonde.

**Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell):** Thank you again for appearing in front of the committee. I'd just like to have a clarification. The previous group that made a presentation were saying that they were representing paramedics. I notice that you represent a group of paramedics also.

**Ms. McVittie:** Yes.

**Mr. Lalonde:** Can you tell us which groups are part of OPSEU and those that are not part of OPSEU? Is the municipal employees?

**Ms. McVittie:** We have a number of ambulance units. I'm not sure which ones CUPE has, but OPSEU has a number of different ambulance employers across the province.

**Mr. Lalonde:** So it would depend on—

**Ms. McVittie:** It depends on which region or which county.

**Mr. Lalonde:** And they would have the choice to either take OPSEU or CUPE as their rep?

**Ms. McVittie:** If they had a vote, yes.

**The Vice-Chair:** The official opposition.

**Mr. Hudak:** Thank you very much for the presentation on behalf of OPSEU this afternoon. One of the points you made was a dedicated seat for OPSEU on the sponsors corporation. The administration corporation as well, or just on the sponsors corporation?

**Ms. McVittie:** Preferably both, but specifically we're asking for the sponsors corporation, because they're going to be the ones determining the benefits.

**Mr. Hudak:** OPSEU has 8,000 members who are part of the OMERS pension. Do you have any idea how that stacks up with respect to the other employee groups that are on the sponsors corporation? Are you close in number to the next lowest?

**Ms. McVittie:** The one we're closest to is the fire-fighters. I'm not sure; I think they have—well, they're here—9,500, something like that.

**Mr. Hudak:** OK. Maybe through you, Chair, we could request from the ministry a better understanding of the different employee groups that exist under OMERS, as well as employer groups, and the number of members in each. This will help us with the sponsors corporation and help us understand OPSEU's point with respect to a dedicated seat. If I do have the material, I apologize; I haven't seen it. But I'd like to request that through the Chair.

You have championed the paramedics as being listed in the legislation along with police and fire, and you also recommend that a paramedic member be on the advisory committee for supplemental benefits. With some paramedics represented by CUPE, others by OPSEU and others by municipalities or the private sector, how do you think that paramedic representative should be chosen?

**Ms. McVittie:** We'd be fine with rep by pop.

**Mr. Hudak:** How am I doing for time, Chair?

**The Vice-Chair:** Two minutes.

**Mr. Hudak:** The current mechanism for rotating seats on the sponsors corporation is rather unwieldy, and Sid Ryan of CUPE had very strong comments about that in his presentation on Monday, where you would basically rotate through according to the population of members and that sort of thing. How do you think we'd best remedy that to make sure that all employee groups have fair representation on the sponsors corp? What would be a better model?



**Ms. McVittie:** What we're recommending is that, probably through the auspices of OMERS, they call a meeting or arrange for all of the smaller groups to meet or to put in nominations and to somehow come to an agreement that way rather than rotating through, because you could end up with somebody who represents hardly anyone on such an important board. We don't see that as a good way to go.

**Mr. Hudak:** This is a very general question to you. You've made a lot of strong points and you have a list of recommendations. The committee will consider this in clause-by-clause and refer it back to the House. What's your advice to the committee: If substantial changes are not made to the bill, should it be defeated or should it still continue because of the principle of OMERS autonomy?

**Ms. McVittie:** We feel that the limits on the benefits are so substantial that we would rather it was defeated than go through as it is.

**The Vice-Chair:** To the third party.

**Ms. Horwath:** Good afternoon. I wanted to explore with you a little bit further what I think you were trying to get at with the previous question, and that is, is there a natural kind of way that the contributions would be kept in check if the cap was taken off? I think the government was trying to get at the point that municipalities can't afford to pay, but I think what you were trying to say was that the members can't afford that either. Could you expand on that a little bit?

**Ms. McVittie:** That's correct. Like I said, I do deal with a number of pension plans, and members are generally not interested in paying more pension contributions either. But also, if there was a particular need for—I don't know—an early retirement program that isn't in place right now, there's no reason why the parties couldn't negotiate a lesser salary increase or some other benefit, and it doesn't necessarily mean that contributions have to go up. If contributions have to go up, we're assuming that we're never going to get back into days when we're going to be having significant surpluses either.

**Ms. Horwath:** So it's fair to say that you believe there are ways, in a responsible manner, to make sure that all parties can negotiate appropriate levels and that the 0.5 is just not required.

**Ms. McVittie:** Absolutely, yes.

**Ms. Horwath:** I wanted to ask you a little bit about your criticisms of the governance model, in particular your comments around the relationship between the administration corporation and the sponsors corporation. I asked this of the minister on the first day of discussion of the bill. I wondered if you would go through that a little bit for me, where your concerns are in that regard.

**Ms. McVittie:** The sponsors corporation essentially is going to be in charge of the benefits and the funding, but at the same time the administration corporation is doing the administration and the investment. We believe they should be accountable not just to themselves but back to the sponsors who are actually paying the freight. That's the point we're trying to make, that the sponsors

corporation should have an oversight role, because right now the government in fact is fulfilling that role of overseeing OMERS.

**Ms. Horwath:** In your documents you say "similar to the role provided by settlors to a trust." That was kind of the issue that I was raising with the minister, that the government decided to bring forward a bill that reflects more of a corporate model than a trustee model. So it would be the opinion of OPSEU that it would be best if it were more a trustee model as opposed to—

**Ms. McVittie:** Absolutely, yes.

**The Vice-Chair:** Thank you, Ms. McVittie, for your presentation.

1700

**Mr. Hudak:** On a point of order, Chair: I don't mean to cause any undue delay, and I do want to hear from the professional firefighters next. This is only to the committee members.

I asked Ms. McVittie, on behalf of OPSEU, if they would rather see the bill go down than not have the amendments made. I didn't have a chance to ask that of others, but I would expect that CUPE yesterday, CUPE ambulance workers today and AMO, among others who have already been here, would probably have a similar viewpoint. Roger Anderson made a comment that eight hours of hearings on such a complex bill is rather limited, and I think committee members know that pretty well every day we're getting more and more submissions.

On Monday, Minister Gerretsen indicated that we're having hearings for four days and there'll be a day of clause-by-clause. We do appreciate the fact that this is going to first reading hearings. He then indicated that there will be debate in the House on second and third readings. I worry, with the number of groups that want to present and the complexity and the dissatisfaction that we've seen to date on the province's approach, that eight hours won't be enough.

I won't do this today, because I want to hear from the other groups, but the Conservative caucus will bring forward a motion to extend the hearings, because I think there's a lot that needs to be said and considered by this committee. I just want to give members notice of that, and hopefully they will consider that by the time that motion is brought forward.

**The Vice-Chair:** That's not a point of order.

## ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

**The Vice-Chair:** The next presentation is from the Ontario Professional Fire Fighters Association. You have 20 minutes. As before, any time you don't use will be divided amongst the parties. You may begin now.

**Mr. Fred LeBlanc:** Good afternoon, Mr. Chairman and members of the committee. My name is Fred LeBlanc. I'm the president of the Ontario Professional Fire Fighters Association. I'm joined today by Brian George, our executive vice-president.



Both Brian and I are full-time firefighters, and we are members of the Ontario municipal employees retirement system, or OMERS, as it is more commonly referred to.

I'm pleased to make this presentation on behalf of the OPFFA with respect to Bill 206, which was introduced on June 1 of this year by the Honourable John Gerretsen.

The OPFFA represents over 9,700 professional full-time firefighters across Ontario. Our members include the front-line emergency responders, training officers, fire prevention and education officials, emergency communications and maintenance personnel within the fire service. All, by virtue of being municipal employees, are enrolled within the OMERS plan.

The OPFFA has been consistent in our support of an autonomous governance model for OMERS that will provide both stability in maintaining the long-term pension promise and flexibility to meet the varying needs of its multiple stakeholders.

As you will see from my brief, we have 10 recommendations with respect to this piece of legislation. However, given the time restrictions applied today I will focus my remarks on our priority concerns.

Probably to no one's surprise, I'll start off with supplemental plans. There has been much discussion around the concept of supplemental plans; however, it is truly unfortunate that many of those discussions occurred within the media and did not take place where it mattered: in the consultation process facilitated by Minister Gerretsen this past summer. The OPFFA, along with our police counterparts, participated in all of the meetings called for this purpose despite the lack of employer participation.

Supplemental plans were introduced as a manner to respond to the need to have flexibility within OMERS. These plans, if adopted, would identify pension benefits that cannot be offered within the basic or primary plan yet would be subject to local agreement through negotiations.

The critical element that everyone needs to understand with supplemental plans is that they are only permissive in nature. They do not automatically grant or extend enhanced pension benefits to any stakeholder; thereby they do not automatically increase costs. Bill 206 could have multiple supplemental plans listing a variety of benefits within each plan, and the fact remains that there are no additional costs to anyone, despite the creative spin sponsored by the employer organizations.

Despite failing to mention the billions returned to both employers and employees recently through the contribution holiday, the employers have attempted to have you believe that supplemental plans will cost taxpayers millions of dollars. They have accomplished this by including or adding a number of possible benefits together—albeit the most expensive ones—as well as assuming that all police and firefighters will receive these benefits on the same day. This is a totally unacceptable illustration, as the reality remains that benefits offered under a supplemental plan must be locally negotiated, and any additional costs are only applied when these

benefits are agreed to between the parties within the larger context of collective bargaining.

As well, it is important to note that all costs are shared 50-50 between the employers and employees. If I can draw an analogy to this, it's no different than negotiating a rider to our existing health plan or dental plan.

As I previously stated, one of our main objectives is to introduce flexibility within the OMERS plan. Firefighters, as you've heard previously, are eligible, along with other public safety occupations, to attain a higher pension accrual rate, to a maximum of 2.33%. This in accordance with the federal government's Income Tax Act. Currently, that benefit is not available to us under the OMERS plan. Firefighters in other jurisdictions across this country have attained better benefits, such as three-year final averaging and better retirement factors. Ontario firefighters cannot seek similar pension benefits under the current OMERS plan.

When you combine this inequity with the employers' aggressive opposition toward the concept and introduction of supplemental plans, it would be impossible to accept that these same employers would participate in good faith at a sponsors corporation level following the enactment of Bill 206 as it is currently written. This would result in a legislative void for our members who, given their occupation, require this opportunity to negotiate the benefits to allow for a financially sound and dignified retirement.

Therefore, we are recommending that Bill 206 be amended to enshrine within the legislation a supplemental plan that includes, at a minimum, the following optional benefits: the highest three-year final average earnings, an accrual rate up to a maximum of 2.33% and early retirement factors of 75 or 80 for NRA 60 members and 80 or 85 for NRA 65 members. You'll find this at recommendation 1, beginning on page 6 within our brief.

With respect to the 2.33% benefit, Bill 206 does not allow any past service to be applied. While I can appreciate the reason for this restriction, we would recommend an amendment that would allow the individual to purchase the past service in a similar manner that employees can purchase past service under optional service agreements currently within OMERS. This allows the recruit firefighter who may have started their career slightly older, which prevents them from working through for a maximum pension, to enhance their current service, at their cost, to complement their shortened careers. You'll find the language within recommendation 5, beginning on page 9 of our brief.

With respect to the CPP offset, paragraph 2 of subsection 12(1) of Bill 206 describes the mathematical calculation with respect to the integration of OMERS with the Canada pension plan. It restricts the offset calculation to 0.6%, where OMERS retirees are currently subject to an offset of 0.675%. The problem with this restriction, although it may be considered even a slight improvement to the current status, is that maintaining a ceiling to the offset at this level places OMERS retirees at a distinct disadvantage in comparison to other retirees



under other public pension plans here in Ontario. Currently, the teachers' and hospital workers' pension plans offer a 0.45% and 0.5% CPP offset respectively, thereby giving their retirees a greater portion of their pension. By deleting this section, we are simply asking for OMERS retirees to be given the same opportunity without requiring future legislative amendments. This is recommendation 4, and it can be found on page 9 of our brief as well.

With respect to the composition of the corporations, there are a number of sections that deal with the composition of both the sponsors corporation and the administration corporation. While we recognize the need for transition and the continuance of the operations of the plan, it is our position that the composition makeup needs to be changed. The rotating appointments for organizations not already identified appear as an attempt to be fair but have the likelihood to be problematic both from a practical and an administrative standpoint. Other stakeholders have promoted a representation-by-population method. While we do not have an alternative to provide the committee at this point, we cannot blindly support the premise of rep by pop.

Professional firefighters represent the third-largest employee stakeholder within the OMERS plan. Currently, Bill 206 provides a position for the OPFFA on the sponsors corporation and the administration corporation. It is our position that a structure for each corporation should be established that identifies the major stakeholders while, at a minimum, maintaining one seat on each corporation for the OPFFA. You will find this at recommendation 6, beginning at page 10 of our brief.

As well as establishing two corporations, Bill 206 also enables the creation of two advisory committees under sections 40 and 41. This is to provide sector-specific advice with respect to benefits that could or should be offered under a supplemental plan arrangement. Inexplicably, though, subsections 40(3) and 41(3) discontinue these committees upon the passing of the sponsors corporation first bylaw under subsection 23(1). More than theoretically, but practically, these advisory committees will never truly be established or meet, as subsection 23(1) states, "The composition of the sponsors corporation and the method of choosing its members is as specified by bylaw."

1710

This bylaw may not even reference the advisory committees, yet currently under Bill 206 they would automatically be discontinued. It is our position that these committees will provide a proper forum for focused debate on areas affecting specific sectors and stakeholders within OMERS, and the legislative authority to establish these committees should be maintained. These matters are not practically associated and should not be legislatively linked. You'll find this recommendation identified as number 8 at page 12 of our brief.

The last issue I'd like to touch on is solvency. Currently, the Minister of Finance is reviewing regulation 909 under the Pension Benefits Act. The OPFFA

supported the OMERS position to remove OMERS from the solvency funding rules found within this regulation. Ontario is the only jurisdiction across Canada that does not exempt public sector pension plans from funding solvency valuations. Although solvency is a justifiable requirement in a pension application, whereby the opportunity realistically exists for the windup of the plan, for example, in the private sector, it appears to be an unnecessary financial burden on the stakeholders of a public plan, where a windup scenario is improbable.

This is especially true with the introduction of supplemental plans. These plans are separately funded, and because they are in a start-up phase, they will face extraordinary additional costs for the first five years. There is simply no reason for this added fiscal pressure when there is no risk of the employers who are participating in these plans going bankrupt. You will find this as our final recommendation, number 10, beginning at page 13 in our brief.

To conclude, the OPFFA appreciates the opportunity to make this presentation. As illustrated in the brief, the OPFFA has long supported self-governance for OMERS. Bill 206 provides a much-needed framework for the stakeholders to debate and provide comment. We applaud Minister Gerretsen and his government for its introduction, but we believe that with our recommendations, this legislation will greatly assist a self-governing OMERS to meet its pension promise to all stakeholders.

Mr. Chair, subject to any questions, that will conclude my presentation.

**The Vice-Chair:** Thank you very much. There are about nine minutes left. That's three minutes each, beginning with the opposition.

**Mr. Hudak:** Mr. LeBlanc and Mr. George, thank you very much for the presentation, and a very detailed presentation at that.

To reinforce my point of order earlier, Chair, it's hard to think of three presentations more different than the three we've seen today—AMO, the firefighters and OPSEU—which all come from a series of different questions and very different approaches. So I do want to again emphasize to my fellow members on the committee the importance of giving due consideration and extending the hearings more than the four days that currently are determined under the motion.

I have a couple of quick questions. Defined benefit versus defined contribution: You want it enshrined in the legislation that it would remain a defined benefit. Under the principle of autonomy, it would be up to OMERS to determine whether that is appropriate on a go-forward basis. Why do you think it's important to enshrine in legislation that that wouldn't be an option for a future OMERS board?

**Mr. LeBlanc:** I think the issue is that it's a defined benefit plan now, and to provide the level of confidence and comfort for both our retired and active members on a go-forward basis, we should establish that one of the basic principles of this plan is that it shall remain a defined benefit plan.



**Mr. Hudak:** Regardless if a future board has a majority vote that would say a combined defined benefit/defined contribution plan?

**Mr. LeBlanc:** It's a staple in this pension plan, and I think it should remain. I feel it's an important enough issue that it should be enshrined within the legislation.

**Mr. Hudak:** One of the aspects of the ministry's presentation was the rebound effect, to ensure that under supplemental plans for firefighters and police, those in the other employee groups would not have any rebound effect on them. Do you think that's an important principle?

**Mr. LeBlanc:** Yes, and that's something that we have supported in our discussions with the other groups, CUPE specifically. I know there was concern with respect to the current wording under the bill. We said we would support amendments in that respect. I haven't seen any new language being proposed as of yet, but just for the record, certainly the OPFFA supports protection against a rebound effect under the basic plan.

**Mr. Hudak:** The paramedics just made a presentation—in fact, both OPSEU and CUPE on behalf of paramedics—that they should also be included under supplemental plans. What's your feeling, as firefighters, about the paramedic issue?

**Mr. LeBlanc:** I encourage that they should be included. They were recognized, rightly so, by the federal government as a public safety occupation. That does enable them to gain the higher accrual rate, 2.33%. It doesn't restrict them from being eligible for supplemental plans the way the bill is currently written, but moving them over into the police-fire group or advisory committee, we would have no opposition to that.

**The Vice-Chair:** Ms. Horwath.

**Ms. Horwath:** I'm wondering if you could tell me whether you think the government has achieved the goal that you indicated at the beginning, that this was going to be devolved into an autonomous corporation. Do you think this bill achieves that?

**Mr. LeBlanc:** The bill may achieve some of the basic principles of autonomy, but I think the structure and certainly our goals for the OPFFA were not entirely met on first reading of this bill. That's why we're obviously recommending at least 10 amendments to the bill.

**Ms. Horwath:** Just in the same vein—I don't think Mr. Hudak asked you this question, but he has asked others, and so I'll ask it this time around—do you think that at the end of the day, if these amendments or if many of the changes that are being recommended in this process are not made, the bill should be thrown out and started all over again? What would be your perspective on that?

**Mr. LeBlanc:** I guess the best way to put it, at the end of the day, if I'm looking at Bill 206 as it's currently written and there are no changes, then I would hope it would be defeated.

**Ms. Horwath:** One of the things that I had the pleasure of doing last week was meeting with my old municipal council; I used to be a member of the muni-

cipal council in Hamilton. Of course, the meeting that I had with them had just come on the heels of a resolution that the council did, falling in line with the AMO recommendation. In our discussion, I asked them whether or not their experience had been that they actually did come up with negotiated settlements with their firefighter union; of course, I knew that they had. I'm just wondering, can you tell me, is it your experience that generally speaking there are opportunities to come to negotiated settlements with municipalities?

**Mr. LeBlanc:** It does go in peaks and valleys where we seem to find issues that might drive local areas to arbitration. Typically, it might be predicated on newer issues. In general, I would say for the most part there are negotiated settlements. We're looking at multi-year deals more so than the single-year deals that used to be more common in our sector.

**Ms. Horwath:** That's great. Then, can I just ask if you believe that there is a natural likelihood that the system of negotiating these supplemental agreements would be affected by the ability of members to pay for supplemental agreements as well?

**Mr. LeBlanc:** I hope I'm understanding your question correctly. Yes, there's definitely a concern, I think, from our members with respect to how deep they'll dig into their own pockets to pay their 50%. That's why I say the employer's numbers are very unrealistic, because it's combining the benefits. I'm a 20-year firefighter and I fully expect, if supplemental plans and benefits were offered up for local negotiations, that my particular bargaining unit would seek to get one benefit. That would probably meet the tolerance level of our members.

**The Vice-Chair:** The government. Mr. Duguid.

**Mr. Duguid:** We'll make these questions as fast as possible, because there are a few of us who have questions. The first is, if there were to be more hearings and this were to be delayed, which could have the impact of delaying the legislation and impacting our ability to try to get this done, if possible, even by the end of the year, would you have concerns about that?

**Mr. LeBlanc:** I guess I do have concerns with respect to the delay. We've been talking about this issue since 1995. The stakeholders have been involved through three parties of government. They were initially started in 1995, and we had a very aggressive go-round in 2001 and 2002 for about 18 months. Positions were thoroughly put forward. This bill finally brought something forward that we could actually debate about a specific model, so I certainly applaud the government for bringing that forward. I just found it unfortunate, when the opportunity was there this summer, that it turned out to be a bit of a wasted opportunity for further debate.

1720

**Mr. Duguid:** You heard AMO's cost estimates today. I'd be interested in hearing your views on that particular item, whether you think those are realistic cost estimates or not.

**Mr. LeBlanc:** I think they're basing their cost estimates on some OMERS costings that were provided



to all stakeholders, but again, I fully believe that they've added up the total number of benefits, which is cost-prohibitive. It's cost-prohibitive to the employees as well. So it's easy to make a worst-case scenario.

As I said in my earlier answer to Ms. Horwath, I think the members' tolerance is going to be there and is going to be a big factor when it comes to negotiations. When you're looking at either extra hundreds of dollars or maybe in excess of \$1,000 per year for an additional benefit, you're going to reach a tolerance level with your own members. It was identified that the basic plan costs are increasing. All that factors in, and that's going to be the reality we'll hopefully face at the bargaining table. So I just can't support what AMO's figures are trying to purport to this committee.

**Mr. Lou Rinaldi (Northumberland):** Do you know of any other jurisdictions in Canada or in North America where supplemental plans are in place to deal with a situation like the firefighters or police?

**Mr. LeBlanc:** Yes. In Alberta they have a supplemental plan arrangement where local negotiations occur. The Calgary firefighters have negotiated a supplemental plan arrangement that would—I guess the easiest similarity would be that it doesn't mirror 2.33%, but it's very similar, and the Edmonton firefighters just recently negotiated from best five consecutive years down to the best-four consecutive years.

**The Vice-Chair:** Mr. Hudak.

**Mr. Hudak:** Just another request for information that I think will benefit all committee members. Mr. LeBlanc makes a point about solvency on page 13 of his report and makes an interesting point that it's improbable, a windup of public sector employers, be it the municipalities or other employers, public school boards. I think teachers and HOOPP are also in the same situation; OSSTF is presenting shortly.

Could I ask, through you, Chair, if we could get some perspective on that from the Ministry of Finance, maybe a briefing note that helps us understand why solvency—I think it's under the Pension Benefits Act, regulation 909, according to Mr. LeBlanc. I could be wrong, but Mr. LeBlanc's presentation discusses regulation 909 in the PBA, which falls under the Ministry of Finance. It's just to help us better understand why solvency is necessary. Is it an open question or not? It'd be helpful.

**The Vice-Chair:** Thank you.

#### ASSOCIATION OF MUNICIPAL MANAGERS, CLERKS AND TREASURERS OF ONTARIO

**The Vice-Chair:** The next presenter is the Association of Municipal Managers, Clerks and Treasurers of Ontario. Good afternoon. You have 20 minutes, and any time remaining will be used among the three parties. You may begin any time.

**Mr. John Craig:** Thank you, and good afternoon to the committee. My name is John Craig. I'm president of AMCTO, which is the Association of Municipal Man-

agers, Clerks and Treasurers of Ontario. I work for the city of Barrie, where I'm commissioner of corporate services. With me today is Andy Koopmans, who is our executive director.

AMCTO is Ontario's largest province-wide association of local government professionals. We came into being in 1938. Our more than 2,100 members are to be found working in 92% of municipalities in Ontario, from the city of Toronto to the village of Thornloe. Our members include chief administrative officers, municipal clerks, finance officers and department heads, along with supervisory, policy and administrative staff at various levels. Most of our members participate in OMERS, and an estimated 90% fall into the unaffiliated/management group of employees—those not occupying unionized positions.

AMCTO's mission is the promotion of excellence in local government administration. In addition to the quality education and professional development activities that we offer, we are proud of our highly regarded certified municipal officer, or CMO, professional designation. We also advocate on behalf of our members for legislation and regulations that promote healthy local democracy and efficient delivery of municipal services.

We are here today to express our support in principle for the devolution of OMERS to the employees and employers, but also our concern about a serious shortcoming in the proposed legislation; namely, the lack of a voice for the unaffiliated management group of employees in the new governance structure.

AMCTO has been actively engaged in the discussions about the future of OMERS for many years. Most recently, we participated in the consultation on governance that the OMERS board of directors carried out in 2002 at the request of the Minister of Municipal Affairs and Housing. In a response submitted at that time, we indicated that we supported most of OMERS' proposals and that we were pleased to see that many of the recommendations made previously had been accepted. We noted, however, our concern about the lack of specific representation in the proposed governance structure for employees falling into the unaffiliated management group. We recommended that a specific seat be assigned to this group on both the sponsors committee and the plan administration board that were envisaged at that time.

Our analysis of Bill 206 indicates that this point has not yet been addressed. Sections 39 and 45 of the bill provide that three and two members of the sponsors corporation and the administration corporation, respectively, will be chosen by a grouping of trade unions—not including CUPE, the OPA and the OPFFA—and professional associations on a rotating basis. Because of their larger size relative to associations, only unions will qualify for representation during the initial term of the new structure, leaving the unaffiliated management group without a voice during this critical period. Section 56 of the bill then repeals sections 39 and 45 as of December 31, 2009, preventing the rotation system from ever coming into operation.



The unaffiliated management group of employees represents a major proportion of the OMERS plan membership. According to statistics released by OMERS on November 4, 2005, the members of the management/union-exempt/non-union group, as it is called in that report, are 19.8% of the total active OMERS plan members. By comparison, the firefighters' group represents 4.8% and the police group represents 10.4%, yet Bill 206 guarantees both the Ontario Professional Fire Fighters Association and the Police Association of Ontario a seat on both the sponsors corporation and the administration corporation, while making no such provision for the unaffiliated management group.

The bill should be amended to create a separate seat for this group on both the sponsors corporation and the administration corporation. This can be done by adding a seat to each corporation, which is the approach we recommend. However, if the Legislature does not want to change the size of these bodies, it can set aside one of the three seats on the sponsors corporation already authorized by section 39 for the other plan members and make a similar amendment to section 45 in respect of the administration corporation. Whichever approach is taken, section 56 of the act should be deleted to ensure that the composition of the two corporations has a clear basis after December 31, 2009. Doing this will not limit the ability of the sponsors corporation to establish an alternative composition through a bylaw under section 23 of the act.

If our recommendations are accepted, the Legislature will need to decide how the seats for the unaffiliated management group should be filled. We do not believe that a rotation system is workable for this group because of the vastly differing sizes, mandates and definitions of membership among the associations. Accordingly, we recommend that Bill 206 stipulate that the seats be filled by the largest province-wide organization representing a broad cross-section of the unaffiliated management group: by AMCTO, the Association of Municipal Managers, Clerks and Treasurers of Ontario. If we are entrusted with this responsibility, we will work with the other associations to establish a process to ensure effective representation for the entire unaffiliated management group of plan members.

AMCTO knows the importance of such representation. Within our organization, over half of our board members are elected at local zone meetings across the province, with the rest being elected at our annual general meeting. We maintain an extensive system of standing committees to provide input to the board and we survey the membership directly to ascertain their priorities.

We also have long experience in collaborating with other associations and organizations in joint projects. For example, this year we joined with the Municipal Law Enforcement Officers' Association of Ontario, the Association of Animal Shelter Administrators of Ontario, the Ontario Society for the Prevention of Cruelty to Animals and the Ministry of the Attorney General to

deliver training to over 500 municipal officials across Ontario on the new dangerous dogs legislation.

**1730**

In preparing today's presentation, we consulted with more than two dozen professional associations affected by Bill 206. While some indicated that they are not interested in being involved, most indicated that they share our concern about the lack of representation for the unaffiliated management class in OMERS governance.

This is the co-operative and inclusive approach that AMCTO will bring to the task if Bill 206 is amended as we have recommended. We will invite the other interested professional associations to a table where we can collectively discuss the issues, develop input and pursue consensus, enabling the various associations to report back to their respective members on a regular basis.

All this can only happen if the Legislature fills the gap that we have identified in Bill 206 with respect to representation for the unaffiliated management group in the new OMERS governance structure. We urge the committee to make the necessary amendments before the bill is reported back to the House.

To sum up, AMCTO, the Association of Municipal Managers, Clerks and Treasurers of Ontario, supports OMERS devolution in principle but urges that the proposed legislation be amended to ensure representation for the one in five OMERS plan members who fall into the unaffiliated management group.

That concludes my presentation. I'd be pleased to answer any questions.

**The Vice-Chair:** Thank you very much. We have about four minutes for each side, beginning with Ms. Horwath.

**Ms. Horwath:** Thank you very much, and welcome. I guess my question is, do you support everything else in the bill, or are you not prepared to say that but what you are prepared to say is that your primary issue at this point is representation on the sponsors corporation and the administration corporation?

**Mr. Craig:** I wouldn't say that we support everything that's in the bill. We support the bill in principle, the devolution in principle. I think our association would like to, if we were asked that question, have the opportunity to review some of the comments of the other associations, some of which made presentations today, to be able to make our own judgment and suggestions in that regard.

**Ms. Horwath:** Have you taken any time to review some of the controversial issues that have come up thus far; for example, the costs of the supplemental plans being borne by the groups that will be affected by supplemental plans, the removal of caps or any of those issues?

**Mr. Craig:** We haven't considered them specifically, no.

**Ms. Horwath:** If the bill were to go forward and your concerns around representation weren't addressed, would you then hope for the bill to not go forward or would you just live with the decision to not address your representation issues? Which would you prefer: the bill gets killed or we go forward without your issue being addressed?



**Mr. Craig:** Andy Koopmans is going to try that one.

**Mr. Andy Koopmans:** Given that our members are involved in legislation on a daily basis, the nature of their position and our position always with any government bill, whether it's this bill or any other, is, if there are legislative flaws or items that would make a bill unworkable, it's always our position that the bill shouldn't go forward if there are unworkable provisions.

**Ms. Horwath:** Excellent. It's awkward because I don't want to put you in a position of asking you questions that are not your priority right now. I could ask you a lot of questions, considering where you come from, in terms of other issues that have been raised, but I think I'll respect the position that you've taken and say that I think that's probably one of the most controversial issues that we're going to have in front of us: how we come to terms with the desire of various plan members to have a voice on the various corporations.

Maybe I could ask you one general question about the model that was chosen, and I've asked it of others as well. The devolution occurred in such a way that people would describe it as a corporate model versus a trustee model in terms of what we have in Bill 206. Any comments on that? Any comments on preference in terms of the type of model that was chosen by the government?

**Mr. Koopmans:** We have not had a particular issue with this model as it stands. It's not, in our view, dramatically different from what was discussed in 2002, when we were last asked to make comments. The names of the boards changed, but the general principles remained the same, so we don't have a particular issue with the corporate structure.

**The Vice-Chair:** Mr. Rinaldi.

**Mr. Rinaldi:** Thank you very much for the presentation. I must say that Ms. Horwath stole all my thunder, because I basically had the same questions.

I respect your position. It's unfortunate that you cannot elaborate in your submission on other issues within the bill, because ultimately it impacts the whole sector under the OMERS umbrella, but I do respect that. I really don't have a lot of questions, except that we certainly appreciate the input, your concerns about the non-union-represented folks or the non-group-represented, which were sort of left stranded. I think that's certainly something that we really could look at closely. Thank you very much—unless somebody's got a question.

**Mr. Duguid:** Just one further question. I thank you for taking the time. Last week, I think, we had an opportunity to chat a little bit. Could you just outline your plan for representation on the new committee and let me know whether you think you could get agreement on the sponsors committee with your fellow employee representative groups, or whether you think it would be impossible to do that?

**Mr. Koopmans:** Where we have an issue with the bill as it currently stands is this principle of a rotation system, where every organization would rotate. As we mentioned, we consulted with 25 different associations that we felt were involved in the unaffiliated and management

group, and we probably haven't captured them all. There is certainly some crossover between the associations as well.

What we're proposing is an attempt to be as inclusive as possible, rather than saying that AMCTO would be the one to represent all management and unaffiliated employees, because we don't feel that we can fairly say that we would. Our model suggests that we would collaborate with the other associations, as many as of them as have indicated they would be interested in pursuing this discussion, to jointly work together on identifying who the single appointee would be. We're suggesting a single appointee on both the sponsors corporation and the admin corporation for a management and unaffiliated representative. AMCTO would be given the responsibility of naming the person, but the decision on who the person would be would be based on consultation with the other associations. It wouldn't necessarily have to be an AMCTO member.

**The Vice-Chair:** Thank you. The official opposition.

**Mr. Hudak:** Thank you, gentlemen, for the presentation. If there were a member of your group, it would be Andy Koopmans. He seems very smooth with his responses.

I just wanted to make sure I understood the presentation. On page 2, you talked about the 2002 consultations, and you recommended that "a specific seat be assigned to this group"—meaning your group, the large grouping of unaffiliated—"on both the sponsors committee and the plan administration board that were envisaged at that time." At that time, was there a particular committee structure that was specified that you were on, or were you just talking about the submission you made in 2002, without conclusion?

**Mr. Craig:** It was just the submission that we made, yes.

**Mr. Hudak:** On pages 5 and 6 you talk about—and congratulations on doing this—consulting with more than two dozen other professional associations affected by the bill and not with guaranteed representation on either of the corporations. You said that "some indicated that they are not interested in being involved." Does that mean not participating at all on the sponsors corporation or admin corporation, or not participating in your umbrella group?

**Mr. Koopmans:** The associations we consulted that said they weren't interested were those that felt they weren't really organizations that represented employees specifically. In some cases they were a separate association and a majority of their members were also members of a particular union, so they felt that they would be covered that way. Others felt it just wasn't within their mandate to say that they were representing the employer interest.

**Mr. Hudak:** You made the point that that represents about 19% of OMERS beneficiaries. AMO made a similar point on your behalf about an hour or so ago. Is it plausible that you could hang together as one group and fairly represent all the members of that umbrella organization? I appreciate the concept. Is it realistic?



**Mr. Koopmans:** From our perspective, it is realistic. While it's a broad range of individuals in that group, generally speaking, their interests are still the same. They are still interested in pension benefits; they are interested in the general structure. They would, I think, have an advantage, in that they would bring forward perspectives from a number of different positions within an organization as well, right from senior administration to more junior positions, so you'd get a broad range. Whether or not every association would agree with the position, that's somewhat questionable.

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**Mr. Hudak:** There's a great philosophical divide that we're hearing at this committee about what autonomy means. This bill is far from truly being autonomous, right? It's very prescriptive, in fact, in a number of the topics my colleagues had asked you about. On the principle of true autonomy, it will be up to the sponsors corporation to determine whether they want to pursue supplemental benefits or not. This legislation is prescriptive. The two philosophies of true autonomy versus actually having supplemental benefits in the legislation—what's your preferred route?

**Mr. Craig:** Coming from the municipal sector, we're used to the confusion between autonomy and non-autonomy, and I would say that we haven't taken a position on that.

**The Vice-Chair:** Thank you, gentlemen, for your presentation.

#### ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

**The Vice-Chair:** The last presenters are from the Ontario Secondary School Teachers' Federation. Good afternoon.

**Ms. Rhonda Kimberley-Young:** Good afternoon.

**The Vice-Chair:** You have 20 minutes. Any time remaining will be divided amongst the three parties. You may begin your presentation.

**Ms. Kimberley-Young:** OK. Thank you. I believe our packages are being handed out. My name is Rhonda Kimberley-Young, and I'm president of the Ontario Secondary School Teachers' Federation. With me is Gerald Armstrong, who is our pensions and benefits officer on staff with OSSTF. The submission is being handed out. I won't walk you through everything in it, but I do want to make some highlights. First of all, we do want to thank you for the opportunity to make this presentation and this submission.

I would say that OSSTF brings the experience and expertise of a union member of the pension partnership that governs the Ontario teachers' pension plan, which is Canada's largest funded employee pension plan. We participated in the formation and the evolution of that partnership. That partnership has stood the test of time and has operated successfully in the best and worst of financial times. The plan has assets of about \$87 billion. The partnership ensures the pension entitlements of

almost 260,000 active and retired members. We believe that the TPP's governance model really does offer a good starting point for an OMERS governance model that is autonomous and democratic.

OSSTF represents about 56,000 members in the education sector, and almost 10,000 of our members contribute to OMERS. These members work in school boards as educational assistants, custodians, secretaries and as professional service providers, social workers, psychologists, psychometrists and so on.

In terms of our pension partnership history, we have a long history of providing pension services and acting as a pension advocate for our members. We have a long history as an active participant in the management of the TPP. You can see on page 4 a bit of the history in terms of the evolution of the TPP. Before 1990, OSSTF held a permanent seat on the board of the Teachers' Superannuation Commission. Between 1990 and 1992, we took a leadership role in negotiations between government and teachers that resulted in the TPP becoming a jointly sponsored pension plan. The terms and conditions of that partnership are clearly established in the detailed partnership agreement. I refer to the partnership agreement because you'll see that mentioned throughout our presentation.

Since 1992, we've held a permanent seat on the teachers' sponsor committee. We've gone through three rounds of pension negotiations and one arbitration, and have participated in negotiating billions of dollars of plan surplus. Today we're working with our partner to find ways to address the funding shortfall in the teachers' pension plan.

For the last 15 years, while we have represented members who contribute to OMERS, we've lobbied for a governance model that gives OMERS members the same pension rights and voice in determining their pension future as our teacher members have. Bill 206, in its current form, does not meet our pension partnership goals. What it does do is provide a framework for the plan's stakeholders, employee and employer representatives, to negotiate a partnership agreement.

We recognize that Bill 206 has incorporated a number of the provisions and concepts from the Teachers' Pension Act, so some of the revisions and amendments that we are suggesting will be borrowed from the TPP model. Frankly, we believe that the TPP model, with some minor adjustments, could establish a pension partnership between the 35 unions and associations representing plan members and the over 900 employer representatives. We outline our submission on the basis of a pension partnership agreement that could be used to amend Bill 206, but we would suggest that this is only the first step toward OMERS becoming a jointly sponsored plan. The second step is to bring the stakeholders together to negotiate the pension partnership agreement that would meet the needs and accommodate the diversity of the membership.

The current OMERS governance model excludes the plan sponsors from any decision-making about the plan



that they're responsible for funding. Bill 206 gives the partners a say in determining the plan's future, but it doesn't go far enough. The bill restricts the authority and decision-making powers of the partners, it assigns too much autonomy and authority to the administration corporation, and it prevents many of the unions and associations representing plan members from participating in a pension partnership that affects all aspects of their pension rights and entitlements.

At the conclusion of these hearings, we would recommend that the government bring the stakeholders together to negotiate a partnership agreement. Bill 206 and the stakeholder responses to the bill could form a starting point for those negotiations. While government has no role in the decision-making process, government should take responsibility for keeping the parties at the table until they reach an agreement. The OMERS staff and the plan actuary should be available if the partners need technical advice, but the current OMERS board has no role in these discussions.

The paper is broken into several sections, so I will refer to the section on page 6 talking about incorporation of the sponsors and administration corporations. What I do want to point out is that we believe these bodies should be renamed. If you look at the rationale we've provided here, calling it a sponsors corporation is really a misnomer for a variety of reasons. It is not a corporation in the sense of various pieces of legislation. We would argue that the sponsors corporation should simply be called the OMERS sponsors committee. We would make a similar argument around the administration corporation. Again, the obligations of that body are no different than they are in any other Ontario pension board of directors. The board is subject to statutory fiduciary requirements of the Pension Benefits Act and common-law fiduciary obligations, and in carrying out its administrative duties, the administration corporation would also be subject to the Income Tax Act and the Pension Benefits Act. We would suggest that the administration corporation should simply be renamed the OMERS board. So throughout the rest of our submission, we will refer to the sponsors committee and the OMERS board on that basis, not that it isn't all confusing enough anyway. We also have schematic diagrams that will help later.

In terms of an OMERS governance model, we would suggest that Bill 206 establish the three components that we believe are the basic foundation for a partnership agreement, because the bill creates a new OMERS operating structure, codifies the duties and responsibilities of the sponsors committee, and prescribes the representation rights of unions and organizations representing plan members and their employers. But as I've said earlier, we don't believe the bill goes far enough. Our submission would build on this foundation in a number of ways. We believe we're presenting the terms and conditions necessary to create the kind of partnership agreement that would be needed for the purpose of designing and administering the OMERS pension plan and managing the fund.

We also have in our brief a presentation of an operating structure in which we believe the partners could fulfill their sponsorship requirements. Under the operating structure, we have some appendices that outline things, which I will go through at the end. If we look at the schematic diagram we have at the back, what we are suggesting is that it is the organizational chart based on the operating structure used by the TPP that we believe would be of benefit to OMERS in terms of a structure. We believe the OMERS partners should use a similar structure to fulfill their sponsorship responsibilities. In this structure, the partners delegate authority or they assign duties to three entities: the OMERS board, the partners committee and the pension negotiations committee. The responsibilities and duties of each entity should be codified in the partners agreement.

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In that structure, which is presented in the appendix in the back, appendix B, the partners committee would provide ongoing interaction between the partners. The partners committee would not have decision-making power; the committee is the partners' agent. The partners committee is responsible for the plan's non-cost amendments and legislative maintenance between rounds of negotiations. Before each evaluation, the partners committee would meet with plan representatives. That would allow the board to consult with the partners during the preparation of an valuation.

An OMERS partnership agreement should require the board to make its best effort to respond to comments and recommendations the partners make, but obviously the content of the final valuation would be the decision of the board. We recommend that the members of the members sponsor committee be appointed to the partners committee and that, on a rotational basis, the TPP partners each appoint representatives to our partners committee. OMERS sponsors would do a similar thing, but would need to appoint more, given the broad range of groups represented. We believe that Bill 206 should be amended to establish a partners committee with equal representation from each partner.

We believe there should also be a pension negotiations committee. Again, you can look through the schematic and the explanation on page 9 of how that body would work and how it would be struck.

We recommend also that any of the costs of negotiation, the costs related to the actuaries preparing information as well as the cost of any mediation and arbitration should be paid for from the fund. We believe Bill 206 should be amended so that the cost of the board's actuary, in preparing any other information that the partners might need in discussing changes to the plan, be paid out of the fund.

Under "Technical Committee," we do not believe the OMERS partnership agreement should include a technical advisory committee, because we believe each partner would likely establish an advisory committee in its bylaws. We've included an advisory committee in the proposed structure to show by example how it would work if the TPP model were used. In the explanation



you'll find there, we have a rationale for the partners each having their own technical committees.

If you flip to page 11, where we talk about the authority of the sponsors committee, this is, I think, very important. OMERS is a workplace pension plan, and its only purpose is to provide retirement wages to plan members and beneficiaries. Ultimately, it's the partners who are responsible for the plan. They should establish a partnership for the purpose of designing and administering the plan and managing the fund. The terms and conditions they establish in a partnership agreement should govern all aspects of the plan and the fund. No aspect or component of the plan, including the OMERS board, has the authority or responsibility unless that authority or responsibility is delegated or assigned to it by the partners through an agreement.

Section 25 of Bill 206 establishes the power of the sponsors committee. This section does not provide the partners with the authority needed to carry out the sponsorship responsibilities. It should be amended to codify the full scope of the partners' authority. If we look at the TPP model, the partners should be responsible for designing the plan structure; setting the benefits of the plan; developing new policy; deciding what the contribution rate will be and what the funding levels, margins and contingency reserves will be; making changes to the plan, to the partnership agreement or to any other plan documents; deciding whether or not to file a valuation more frequently than required by the act; and appointing the board and defining the role of the board.

Subsection 42 (2) of Bill 206 requires that the partners meet every three years following the triennial valuation. OSSTF believes the sponsors' partnership agreement should contain a commitment that either partner may ask the other to meet to discuss changes for any matter for which they carry responsibility.

The next section talks about delegation of responsibilities to the board, and I would point you toward the bottom of page 12. These are suggestions we're making in terms of responsibilities and authority that we think should be established in a partners' agreement. In effect, we believe a memorandum of understanding should be set out with the board, setting out what the board is responsible for. I won't go through that list of items, but reaching by agreement between the partners what responsibilities the board has is, we believe, the appropriate course. We've outlined what we think those responsibilities should be.

Bill 206, as it's written, gives the board more authority than it ought to have, and it's not as specific as the TPP partnership agreement in codifying the responsibilities of the board. On page 13 you see a list of responsibilities that we believe the OMERS board should have. Again, we've been very specific in terms of requirements and obligations that the board should have.

Obviously, a key issue is representation. Bill 206 establishes a method for appointing employee representatives to the sponsors committee and the OMERS board. We believe the method that is included in Bill 206 is unfair and capricious. It prevents most unions and asso-

ciations from representing the pension rights and entitlements of their members. Sections 23(2) and 39 set out the composition of the sponsors committee, effective on the first anniversary of the OMERS act. The appointing process does not adequately reflect the size and composition of the plan's membership. For example, CUPE police and firefighters have a permanent seat on the sponsors committee, and they have a permanent right to appoint members to the board.

When we look at the data from the OMERS board as of November 4, and that's included for your information, we can see that the actual difference in membership between some of the unions and associations is very small. For example, the firefighters represent 4.75% of the plan's active membership. OSSTF represents 4.38% of the plan's active membership status. That's a difference of about 834 members, which could obviously fluctuate as circumstances change. We would argue that if we're placed in a rotation pool with 31 other unions and associations representing employee contributors, it will be a fairly arbitrary cut-off in terms of the unions and associations included in this act.

If we look at the board's updated data, it identifies that of the 35 unions and associations representing OMERS contributors, there are only 10 that represent more than 1% of the plan's total active membership. We would recommend that Bill 206 be amended so that unions or associations that represent 1% or more of active members have permanent seats on the sponsors committee. Employee representatives on the sponsors committee would make all their decisions, including their appointments to the OMERS board, on a representation-by-population basis. That would still address the needs of larger unions to adequately represent their membership base.

In terms of appointments to the OMERS board, again I will make a comparison to the teachers pension plan. Prior to establishment of the partnership, each teacher union had the authority to appoint board members to the Teachers' Superannuation Commission. When the commission was replaced by the TPP board of directors, that meant that we no longer had those individual rights as unions, but that the teacher sponsors collectively appoint TPP directors. It wasn't easy for the teacher federations at the time to relinquish their authority to make those direct appointments, but soon after we became pension partners with government and the partnership agreement was negotiated, the teachers developed a very good process of selecting board members. When a seat becomes vacant, we have a thorough process to help us identify the skills and expertise that the board needs. We solicit candidates. A selection committee shortlists, we interview and we collectively decide who to appoint to the board.

Subsection 33(1) establishes the process by which employee representatives will appoint board members. We would argue that this is probably the sponsors' most important responsibility. OSSTF believes the member sponsors committee, rather than individual unions and associations, should appoint representatives to the OMERS board.



The federation's amendment is based on the premise that once directors are appointed to a pension plan board, those directors, by law, are required to act in the best interests of all plan members. The members sponsor committee, representing the majority of plan members, should appoint directors to the board. Again, if you look at the bottom of page 16, we would argue that there should be at least a 75% weighted vote from the appointing sponsors committee, which again would address the different representation numbers of the various unions.

I won't walk you through all of the detailed other changes that we would recommend to the bill, but you can see on page 17 our comments on supplementary benefit plans. We would argue that any liability incurred as a result of those should be the responsibility of the parties who negotiate those improvements.

We do take umbrage at the use of the words "former members" to refer to retired members of the OMERS plan and would argue that that language should be changed.

In terms of the funding management policy, subsection 15(1) of the bill suggests an assets-to-liabilities ratio of 1.05; in other words, setting aside a 5% contingency reserve before a plan's surpluses can be negotiated. We would support a 5% contingency reserve because it allows the plan actuary to use less conservative margins for adverse deviation if the actuary knows that the partners can't spend the first dollar of surplus.

We believe Bill 206 should be amended to have a funding management policy in its entirety, with perhaps a contribution corridor so that when the plan is funded between 90% and 105%, there are no changes to either benefits or contribution rates.

**The Vice-Chair:** Thank you very much, Ms. Kimberley-Young. Your time is up.

I want to thank everyone for participating. I want to thank the ministry, ministry staff and everyone else.

This committee now stands adjourned until 4 p.m. on Monday, November 21.

*The committee adjourned at 1801.*







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## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 21 November 2005

# Journal des débats (Hansard)

Lundi 21 novembre 2005

**Standing committee on  
general government**

**Comité permanent des  
affaires gouvernementales**

Ontario Municipal Employees  
Retirement System Act, 2005

Loi de 2005  
sur le régime de retraite  
des employés municipaux  
de l'Ontario

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 21 November 2005

Lundi 21 novembre 2005

*The committee met at 1600 in room 151.*ONTARIO MUNICIPAL EMPLOYEES  
RETIREMENT SYSTEM ACT, 2005LOI DE 2005  
SUR LE RÉGIME DE RETRAITE  
DES EMPLOYÉS MUNICIPAUX  
DE L'ONTARIO

Consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act /  
Projet de loi 206, Loi révisant la Loi sur le régime de retraite des employés municipaux de l'Ontario.

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. We're here today to continue public hearings on Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act. I'd like to welcome all the witnesses who are here today and tell you that you have 20 minutes to speak. When you begin speaking, I will have a timer. Should you leave time at the end, you'll have an opportunity to be asked questions by members around the table.

## TORONTO POLICE SERVICES BOARD

**The Chair:** Could I ask the Toronto Police Services Board to come forward. Welcome. Is it Mr. Mukherjee? Could you identify yourself for Hansard when you begin, and should anybody else be speaking with you, could you identify them as well. When you begin, I'll begin the timer.

**Dr. Alok Mukherjee:** My name is Alok Mukherjee. I have with me Mr. Doug Moffatt. Good afternoon, Madam Chair and members of the committee. I want to thank you for allowing me the opportunity to make some comments on Bill 206.

The Toronto Police Services Board strongly opposes the provisions of the bill that permit a simple majority of the sponsors corporation the authority to create new pension liabilities, which could amount to tens of millions of dollars for Ontario taxpayers and in particular the taxpayers of Toronto. I do not believe that unanimity, which is the procedure we will recommend, is too much to expect when so many millions of taxpayers' dollars are at stake. Further, I also do not believe that an arbitrator should decide in the event that the sponsors corporation

cannot make a unanimous decision. Unelected, unaccountable arbitrators should not decide when a new pension liability should be imposed on Ontario taxpayers.

Let me explain, starting with the issue of sponsor unanimity. Unlike other well-respected and well-governed devolved public sector pension plans, such as the hospitals of Ontario pension plan and the Ontario teachers' pension plan, Bill 206 would allow a mere simple majority of sponsors corporation members to approve plan changes and contribution rates. I submit that the requirement to have the full agreement of all sponsors as a precondition to the establishment of benefit or contribution rate changes is essential to responsible governance and safeguarding of this plan. I would challenge your committee to ask why such a significant departure from the governance structure of so many other highly successful devolved plans is contemplated, particularly if the intention of this bill is to promote good governance.

Bill 206's stark departure from the best governance practices used in other pension plans leads us to conclude that there is a very good chance that well-organized employee representatives will be successful in establishing costly new benefits that are opposed by a majority of employers. Bill 206 specifically directs the sponsors corporation to consider providing supplemental benefits to police and firefighters. A majority of employers could oppose such benefits due to their prohibitive cost, and yet a simple majority of sponsors could establish these remarkably expensive benefits. Worse, in the absence of a simple majority, these huge additional liabilities can be imposed by an arbitration system that is completely divorced from the collective bargaining process under the Police Services Act, with no responsibility to account to the taxpayers or their elected representatives for the increased spending.

I wish to be categorically clear on one matter: We support an amendment to Bill 206 that would have it join the ranks of most other Canadian public sector pension plans by requiring the sponsors corporation to reach unanimous agreement before making fundamental changes, including changes to benefits or contribution rates.

With respect to the mediation and arbitration provisions of the bill, the Toronto Police Services Board is uniquely positioned to comment on the provision for binding arbitration. By way of summary, I would submit that there are four major concerns with the bill's



mediation/arbitration provisions: (1) They place too much power into the hands of an unelected and unaccountable authority; (2) they fail to place any real constraints on the possible outcomes of arbitration; (3) they undermine the opportunity for consensus-building and deal-making among sponsors; and (4) they increase significantly the possibility that local-interest arbitrators will impose supplemental benefits through interest arbitration.

Bill 206 would allow any member of the sponsors corporation to refer a matter such as a proposed benefit enhancement to arbitration. We say that the bill grants arbitrators too much power because an arbitrator could, for example, establish supplemental plans where the parties would otherwise be unable to agree. In those devolved pension plans that do have an arbitration provision to break deadlock, the arbitrator is not authorized to issue an award of any kind if it increases contribution rates. That isn't the case with Bill 206. Nothing in this bill would prevent a series of initiatives being referred to arbitration, each of which can be considered in isolation.

If you think about the very different interests of the employee representatives appearing before this committee, I know you can appreciate that each will be seeking to achieve a particular objective through this arbitration process. We are concerned that the inclusion of a binding arbitration clause in the bill will weaken the likelihood of negotiated agreements at the sponsors corporation. At stake at the sponsors corporation is the need to ensure an accountable and responsible process for making benefit and contribution rate changes, but I ask you, is the proposed process conducive to the governance of a \$36-billion pension plan?

What is also at stake at the sponsors corporation is the establishment of the very bylaws and rules that will guide the future governance of OMERS. In its present form, this bill drives the parties into their respective corners for a fight at arbitration, rather than challenging them to find common ground and direction for the sake of the plan's governance, operability and financial welfare. I challenge your committee to remove the arbitration provisions from the bill and hold each of the sponsors responsible for reaching its own deals, rather than relying upon arbitration.

The bill's arbitration provisions greatly increase the likelihood that supplemental plans will be imposed upon police boards through local-interest arbitration awards, but the issue of local costs associated with supplemental plans is effectively divorced from the arbitrator's decision-making process because the legislation says that the issue of costs would be the subject of local negotiations. Without any financial limits or constraints on what an arbitrator can award, the issues we foresee arbitrators having to assess are the policy issues of whether or not to provide access to certain benefits. An arbitrator appointed under the Police Services Act would be hard-pressed not to find that a benefit already approved by another arbitrator in a different sector is suitable for the police sector.

The prospect of supplemental benefits rolling out in our community is financially daunting.

**1610**

I cannot complete my submission to you without noting the very serious financial implications to us of the possible establishment of supplemental benefits. Conservative estimates suggest that the institution of supplemental plans will double the Toronto Police Services Board's OMERS contribution expense from the present \$44 million to a whopping \$82 million. That is a staggering figure and one I want you to be completely cognizant of when you assess the merits of the other submissions that you will have heard during these hearings.

In conclusion, I would submit to you that this bill ignores the best governance practices of almost every devolved public sector pension plan in Canada. Seeing this, we worry about the future governance and financial viability of this \$36-billion plan. For all of these reasons, and to pick up on my earlier submissions, fundamental changes to OMERS should only be permitted if the sponsors corporation unanimously agrees, and there should be no binding arbitration.

Thank you for the opportunity to make this presentation to you today. I would be pleased to answer any questions you may have, but first I will invite my colleague Mr. Moffatt to address some comments to you.

**Mr. Doug Moffatt:** Thank you, Alok. Good afternoon, ladies and gentlemen. I will try to be as brief as possible. I understand the constraints here. My name is Doug Moffatt. I'm the chair of the Durham Regional Police Services Board, and I'm also a director of the Ontario Association of Police Services Boards.

Along with Dr. Mukherjee, we were concerned that the OAPSB, representing all of the boards who are members, was not among the groups chosen to present. We have, we think, a story that is interesting and important to be told. I want to make sure that I cover off the fact that we concur, as an association, with the comments, by and large, made by Alok about Toronto's position. I'm not going to go into a lot of difference there. I want to make sure, however, that a minimum OAPSB request on this particular bill be heard.

We are not opposed to the bill. We think it can be made a workable and good bill, but it does need work and it does need some change:

—At a minimum, we should ensure that the structure of the sponsors corporation and the administration corporation at all times consist of a balanced representation of employee and employers.

—We should eliminate the reference to police and fire employees in section 4, permitting the establishment of supplemental plans.

—We should eliminate subsection 10(2), requiring the sponsors corporation to consider providing optional increases in pension benefits for members employed in the police and fire sectors.

—On subsection 26(1), a requirement for a two-thirds majority vote for all decisions of the sponsors corpor-



ation, or more preferably a requirement, as Alok has said, for the unanimous support for any significant plan design changes.

—Make clear that the sponsors corporation may not, subject to appropriate exceptions, implement changes in benefits for members or in contribution rates, by bylaw or otherwise, more frequently than tri-annually.

—Eliminate the dispute resolution clauses in the bill.

—In addition to that, we feel strongly that due diligence has to be applied throughout on this particular item.

We asked our members to do their own costing analysis based on the potential of supplemental plans. In most communities, it is estimated that such costs will result in property tax increases of at least 3%. On a province-wide basis, that would amount to about \$380 million a year, without a single penny toward addressing any public service needs.

Tax dollars directed to pay for the province's decision for supplemental plans to be implemented will take municipal funds away from infrastructure and service requirements in every part of Ontario. The 3% increase in costs does not include a pending 9% increase in contributions in 2006, estimated at a cost of \$137 million a year; potential increases in post-employment benefits associated with adopting supplemental plans; sponsor start-up costs of an estimated \$5 million to \$10 million; anticipated higher administrative costs for OMERS; or other costs associated with the potential future extension of supplemental benefits to other emergency workers.

OMERS is a key player in the health and growth of Ontario's economy. For example, through its private investment program in major infrastructure projects for Ontario, we all recently learned that OMERS plans to invest \$4.25 billion in the Bruce Power plant.

We understand that with its own deficit challenges, the province is working hard to better manage and control its own costs, but in everything it does, the province must also consider how its actions impact on municipal government and on property taxes. You've heard it before: There is only one taxpayer.

Thank you very much, Madam Chair.

**The Chair:** Thank you, gentlemen. You've left about two minutes for each party, to begin with Mr. Hardeman.

**Mr. Ernie Hardeman (Oxford):** Thank you very much for your presentation. I find it rather interesting. When the minister introduced the bill, he suggested that we shouldn't worry about the supplemental plan, because all the benefits from it or all the costs from it would be fairly negotiated between the parties. So there was no sense worrying about that, because everybody would have the same risk and the same benefit from the end results. I'm not surprised, but I find it rather interesting that the minister would see it that way. In fact, so far we have not heard one presentation that agreed with that synopsis on the supplemental plans. I'm not suggesting right or wrong, but it's rather interesting.

The one thing I would like to ask about is the ability of the sponsoring body—you're suggesting that we should

have just a straight vote as to changes in the plan, as opposed to having a two-thirds majority?

**Mr. Moffatt:** It should either be a two-thirds majority or a unanimous vote required.

**Mr. Hardeman:** Required, not just a majority vote?

**Mr. Moffatt:** Required—unanimous.

**Mr. Hardeman:** Not just a majority vote. OK. I was a little concerned. I thought I heard you say that you wanted it to go to just a majority vote, and I just couldn't understand why that would be.

**Mr. Moffatt:** Two thirds would be minimal; our preferred would be a unanimous vote.

**Dr. Mukherjee:** We at the Toronto Police Services Board have said that it should be unanimous, so that it persuades and forces sponsors to try and reach negotiated settlements among themselves.

**The Chair:** Mr. Hardeman, you have 30 seconds.

**Mr. Hardeman:** OK. The last thing I wanted to ask is, could you tell me why it is that the employer sees the end result of arbitration differently for pension benefits than it does for the regular salary? Isn't it the same thing? I mean, it's a cost to the employer and a benefit to the employee.

**Mr. Moffatt:** I think Alok made it clear in his presentation that arbitrators are chosen from a list of arbitrators. They don't—as you do, Mr. Hardeman—have to go back to the voter and face those people. They tend to pick things from one settlement as opposed to another, and eventually, practices become standard just because they have become practices. We saw that with the retention pay issue across police services; as soon as it was established in three or four, all the arbitrators rolled them in. That's what seems to happen.

**Dr. Mukherjee:** The point I made was that if there is an arbitration award for supplementary benefits in one sector, it's very likely that that will be used in another sector. We continue to roll down all the sectors.

**Ms. Andrea Horwath (Hamilton East):** I have two questions, initially. If we can get more than that in, then I'll go for it.

I'm going to go on the same vein, but ask: In your brief on page 6, you indicate that you don't like this idea of arbitration, that in fact your preferred system of dealing with these issues is then to have the province retain the authority to review and make final, binding decisions. I guess what I'm wondering is, isn't this getting rid of the whole premise, which is the autonomy of OMERS, the autonomy from government? Could you remark on that? It's on page 6 of the brief, the bolded paragraph.

**Dr. Mukherjee:** I'm working from two documents.

**Mr. Moffatt:** It's been tough to know these things.

**Ms. Horwath:** So in the last line there, you say that the province could retain authority to review. But isn't that contrary to the whole principle of what the exercise is that's in front of us, which is to have OMERS' autonomy from the government?

**Mr. Moffatt:** I don't think, from the OAPSB point of view, that it is departing from the principle.



**Dr. Mukherjee:** I think it's provided as a qualifier, that the first requirement is for the sponsors corporation to find unanimity, but the provision we're saying is that if this can reject doing that, then there should be some way to resolve it, and that should be where the government could play a role.

1620

**Ms. Horwath:** So then, as opposed to an arbitration system, which is theoretically a neutral third party, you would put that responsibility back on to the government, and you don't see that as a bit of a conflict in terms of the vision behind devolution of OMERS.

**Dr. Mukherjee:** I guess in principle we support the notion of autonomy and we want to see that autonomy implemented, but we're also concerned that it should be done in a way that does not impose prohibitive costs on the employer. Our fear is that arbitration will result in such costs.

**Ms. Horwath:** OK. Just very briefly—

**The Chair:** I'm sorry; your time has expired. Mr. Duguid.

**Mr. Brad Duguid (Scarborough Centre):** In my two minutes, there are about three or four little points you brought up that I'd like to comment on. If there's time for you afterward to comment, that's great.

I want to thank you both for being here and taking the time to join us. We're doing this after first reading, which is somewhat unusual, to ensure that we get input from all stakeholders. We will be considering all the input we receive seriously.

There were a number of points you raised in your presentation, though, that I'm looking at with some question. First, you've indicated that there are serious financial implications and you brought forward some cost estimates. I haven't had a chance to look at them in detail, but it appears to me that you're probably looking at 100% take-up in those cost estimates. We had the firefighters here just the last meeting who indicated that even the employees wouldn't be looking toward 100% take-up. I haven't had a chance to look at your cost estimates, but if they're based on the same as others that have come before us, they're very unrealistic—not to say there will be no cost down the road, potentially, but that cost is something that would be negotiated between employees and employers.

Second, you indicated as well that you'd like to see unanimous consent required on the sponsors committee from all three parties. I guess my question on that is, if I was an employer, of course I'd want that, because you would never give them an opportunity to ever consider supplemental benefits, unless you felt that was something in your interest as employers. I'd look at that. I understand why you would want it; I'm just not sure how fair that would be to the other stakeholders.

Third, you indicated that you want—

**The Chair:** Mr. Duguid, do you want to give them a chance to respond, because you have 30 seconds left?

**Mr. Duguid:** I'll just quickly go to my third point—no binding arbitration of new benefits. I wonder, for

employees who don't have the right to strike, how would they then be able to articulate their concerns or their desire to see supplemental benefits if they didn't have an arbitration opportunity?

**The Chair:** Gentlemen, I'll give you a chance to respond, but if you could be brief, I'd appreciate it.

**Dr. Mukherjee:** I haven't seen any cost estimates from the government. I'd like to see what the government estimates are before this bill was introduced. Our estimates are based on surveys that were undertaken by different organizations and we feel that they are within the realm of possibility. Your sense of what's realistic may be different from ours, since we have to find the money.

As to the question of unanimity, we believe it is possible to reach that. If there was a provision like that, it would force parties to make deals and to come to agreements around the table. If there was an arbitration provision, the temptation would be to take issues to arbitration, especially when the requirement is a simple majority. That's not a great incentive to find agreement, to find unanimity. The incentive of the simple majority, in my mind, will encourage going to arbitration.

**The Chair:** Thank you, gentlemen. I appreciate you being here today.

I would just remind you that you have some background information that was requested from OMERS in front of you, just in case you were wondering what these extra briefs were: requested materials. They should be in two packages.

## CITY OF LONDON

**The Chair:** Our next delegation is the corporation of the city of London. Good afternoon. Welcome. If you could identify yourself and who will be speaking. When you begin, you'll have 20 minutes.

**Mr. Grant Hopcroft:** I'm Grant Hopcroft, director of intergovernmental liaison for the city. With me are Vic Cote, general manager of finance and corporate services for the city, and Mike St. Amant, city treasurer.

Thank you very much for the opportunity to convey the city of London's serious concerns regarding this bill. We regret that a member of city council couldn't be with us this evening to deliver the brief, but it conflicts with a city council meeting tonight. The 2006 water and sewer budgets are on the table, so it was kind of difficult to pry someone away from something quite as engaging as sewer and water issues.

For us, the OMERS pension plan represents a significant investment of some \$36 billion in net assets. It affects the lives of hundreds of thousands of employees and retirees across this province. Given the significant investment that's at stake, a high level of consultation and diligence is called for as the government considers this bill and the implications for those who rely on it.

While we appreciate the opportunity to comment at first reading, we are dismayed that only eight hours of hearings over four days have been committed to by the



government at this point. In the face of this apparent rush to third reading in early 2006, we're looking for a commitment to more research, consultation and review to address the many concerns that we and other municipal employers asked for but were not permitted the opportunity to express in person to the committee, and to avoid the perception that this bill is a fait accompli.

This government has made great strides in consulting with municipal governments during its mandate, and that commitment to listen and to consult has never been more important than in the context of this particular bill. We urge you to conduct further review and due diligence on both the obvious costs to the municipal taxpayer and the less obvious, hidden costs and to commit to further consultation following second reading.

I'd like to dwell a bit on the impact on the city of London taxpayers if this bill were to pass. In the past two years, our citizens have experienced property tax increases of 8.1% in 2004 and 6.6% in 2005. A significant portion of those increases were directly attributable to provincial downloading in the form of mandated programs and new regulations. To mitigate the continuing impact on our taxpayers, the city, along with many other municipalities, was proactive in raising these issues and explaining why these practices could not continue, and you listened. This year, London's property tax increase will be less than 5%, and very little of that increase will be because of new provincial downloading.

However, we face a new pressure: For 2006, 60% of our anticipated increase is attributed to high arbitrated wage and benefit settlements with police, fire and land ambulance. In fact, of the proposed \$18-million increase in our levy for 2006, \$11 million is directly related to protective services in London, and none of this \$11 million accounts for a single improvement in service to our residents.

If passed, Bill 206 will inevitably lead to further major increases to the cost of providing protective services, and again, without any improvements in service levels to our citizens. Bill 206 provides for consideration of supplemental plans to increase pension benefits for the police and fire sectors and opens the door to consideration of supplemental plans for all sectors. Of particular and immediate concern is the opportunity for enhancements which would see the annual rate at which police and fire pensions accrue increase from 2% to 2.33%, effectively reducing years of employment to achieve full pension by five years, along with the impact of 25-and-out and 30-and-out enhancements that will be on the table.

The cost of such a change to London property taxpayers is estimated to be \$8.375 million, or a 2.3% increase in the London property tax rate. When you consider the probability of this benefit spreading to land ambulance, the potential increase is closer to 3%, and this doesn't even account for other wage and benefit demands or the impact on municipally funded boards and commissions other than police and fire, which would add to this amount; nor does it consider a number of other potential supplemental benefit plans.

AMO has estimated the impact across Ontario at \$380 million. This number is almost exactly the estimated 2006 property tax levy for the entire city of London. What this bill could result in is that kind of money being taken across this province, without any direct improvement to the level of service, simply to fund enhancements to benefits and pensions.

#### 1630

The property taxpayers of London cannot afford this bill. Like many others, our city faces an infrastructure deficit, housing issues, a variety of new regulations and increasing needs for services and new fire stations. These needs cannot be addressed if our existing services in police, fire and land ambulance continue to receive wage and benefit increases that far exceed our ability to pay.

The argument will be made that municipalities are free to negotiate such benefits and changes and that Bill 206 doesn't force this change, but we do not agree. London is participating in an arbitration hearing this week on a fire wage settlement. The city is not in agreement with the fire association that they receive retention pay. Retention is not an issue for our firefighters. Notwithstanding this provision and this position, some other municipalities have negotiated to give retention pay to firefighters, and we may possibly have to give retention pay through the arbitration award. That brings with it additional hidden costs, and costs in increases of pensions.

Our same fear exists with the cost of requests for enhanced pension benefits. These costs could be imposed on us through an arbitrated settlement made inevitable by Bill 206.

Between retention pay, salaries and benefits and the possible impact, our costs for emergency services could rise by as much as 33% over a three-year period. Compare this to other public and private wage earners earning average increases of only 2% to 3% per year. London cannot afford Bill 206, and our London taxpayers cannot afford it either.

I'd like to turn now to some of the specific provisions of the bill. You've heard from AMO and others that this legislation is flawed and will lead to a host of problems. We'll highlight only a few today.

A simple majority vote of the sponsors corporation for major changes to the plan is not supported by London. The creation of supplemental plans and major changes to benefits and contribution rates should require unanimous, or at the very least super-majority, support of the sponsors corporation board.

Mediation and arbitration: We do not support the dispute resolution provision in the bill establishing a binding arbitration process, as it leaves employers vulnerable to an arbitration system that has not worked for them and that is in need of reform. Benefits have to be negotiated and agreed upon by employers and employee members of the plan through a balanced government model. Few other pension plans are subject to a mediation-arbitration process for major changes, and neither should OMERS.

Plan design: The proposed legislation talks about autonomy, yet it defines the OMERS contribution as a defined benefit plan and provides no option to look at



other defined plans. At a time when OMERS has a significant unfunded liability and we see other private and public plans in serious financial difficulty, the option should be open to the governing board to consider other types of plans.

**Capping:** Bill 206 prohibits the sponsors corporation from amending the plan in a manner that reduces contributions or increases growing-concern liabilities if the change brings the funded ratio of the plan to less than 1.05% on a growing-concern basis and 1% on a solvency basis. However, amendments that do not increase the growing-concern liabilities by more than 1% are exempt from this restriction, and an exemption of this magnitude is significant in a plan of \$36 billion.

**Start-up and transition costs** for the sponsors corporation have been estimated at between \$5 million and \$10 million. Stakeholders will also incur substantial costs preparing for these new responsibilities. The province should require start-up and transition funding to enable stakeholders and the sponsors corporation to prepare for devolution.

**Subsidization of supplemental plan costs** by the basic plan is a concern, despite the apparent prohibition in the bill. Clear language is required to remove any ambiguity.

**Portability:** One of the strengths of the OMERS plan has been its portability—the ability to transfer pensions across municipal boundaries. This bill will make portability more difficult and will make administration extremely expensive for those who do wish to move between employers.

Lastly, I'd like to deal with solvency. The OMERS board raised solvency issues in their submission. The provisions of the Ontario Pension Benefits Act, while beyond the scope of this hearing, require further review and consultation with stakeholders and review by pension experts.

What are we asking you to do? (1) We're asking this committee to send the bill back for further analysis of the potential costs and financial implications for employers and employees, and for further consultation with stakeholders and pension experts; (2) hold further hearings at second reading; (3) eliminate the requirement for the sponsors corporation to consider enhancing pension benefits for employees in the police and fire sectors and eliminate the requirement that the sponsors corporation cannot consider defined contribution pension plans—neither requirement is a reflection of true autonomy; (4) key decisions such as significant plan design changes should require unanimous consent or at least a super-majority vote of the sponsors corporation; (5) eliminate or modify the proposed dispute resolution mechanism for significant changes to the design of the plan or creation of any supplementary plans; and (6) provide start-up funding and support for the sponsors corporation through the transition period.

Thank you for your attention. I'd be pleased to answer any questions.

**The Chair:** Thank you, Mr. Hopcroft. You've left about three minutes for each party, beginning with Ms. Horwath.

**Ms. Horwath:** I wanted to ask first about your point around portability. It's the first time I've heard it in these hearings. Could you explain that to me a little bit, what your concern is?

**Mr. Hopcroft:** Yes. Our concern is that with a multiplicity of claims, if an employee's current employer has a different plan than someplace they may wish to relocate to, it will make that relocation difficult. It will be a barrier to the mobility of the labour force and will not leave employers open to a full pool of qualified labour, because people will be reluctant to move where pension plan changes have not moved as quickly as in some other areas.

**Ms. Horwath:** How is that different from what currently occurs?

**Mr. Hopcroft:** Currently, the OMERS plan is a uniform plan for all municipalities in Ontario. If an employee chooses to move from London to Toronto or from Toronto to London, that plan is completely portable. If there are differences in pension benefits, it can be an impediment to the mobility of the labour force.

**Ms. Horwath:** The other question I have is on your comments around defined contribution plans. You indicate that you have a desire—and so have many others from the municipal sector, including AMO—to see the opportunity for defined contribution plans introduced, as opposed to enshrining the principle of defined benefit. Can you explain that a little bit?

**Mr. Hopcroft:** If this bill is really about autonomy, it should give the board of the sponsors corporation the opportunity to truly discuss those and reach consensus among employers and employees without the threat of binding arbitration. It should not be a requirement. Either this bill is about devolution or it's about something else, and we're concerned it's about something else.

**Ms. Horwath:** Do I have more time?

**The Chair:** Yes.

**Ms. Horwath:** On page 2 of your brief you describe the increase to the property tax base, which I think is about two thirds of the way down. It's bolded, actually. Can you just tell me what your assumptions were when you came up with that estimate?

**Mr. Hopcroft:** Yes. I'd like to turn that over to Mr. St. Amant for a more detailed response to that question, but it includes certain assumptions which were consistent with what AMO and MFOA have put forward. I'd like him to dwell on some of the issues that are not included in those costs as well, and which we would face in any event.

**Mr. Mike St. Amant:** Our assumptions are based on information from Watson Wyatt Worldwide, who are the actuaries for OMERS, and the presentations they have done based on different supplemental plans. Included in those costs is a snapshot of the OMERS database. The numbers would apply to the province as a whole but don't necessarily apply to the demographics of the city of London.

We have not hired an actuary, so our numbers will be different, but this was our best estimate, based on the



information available. It's based on 2006 wage and salary budgets. It does not include our demographics. It does not include the newly ratified 9% increase. It does not include other boards and commissions in the city of London, other than police. It does not include land ambulance. It does not include post-employment benefits, which average approximately \$2,500 per employee per year, and there are 2,900 employees in OMERS at this point in time. It does not include sponsor costs and does not include higher administrative costs as a result of supplemental plans. It also does not include any other potential supplemental plans which we've heard some discussion about in terms of pension enhancements.

1640

**Ms. Deborah Matthews (London North Centre):** Thank you very much for your very thoughtful and articulate presentation. I would expect no less from people from such a fine community.

I have a few questions. Maybe you could just clarify a simple one first. You used the term "super-majority." I'm not familiar with that expression.

**Mr. Hopcroft:** Two thirds or three quarters; preferably unanimous, but something beyond a simple majority.

**Ms. Matthews:** Do you have any problems with the notion of devolution of OMERS autonomy?

**Mr. Hopcroft:** We'd like to know who's been asking for this devolution and for the legislation in the first place. Devolution, in and of itself, is not what concerns us, if it is truly devolution with a model of governance that works. We are very concerned that the governance model that's in this bill does not work for us. We've watched and read some of the other Hansard material and we've seen some of the other submissions. It obviously doesn't work for people, not just on the employer side but the employee side as well. We feel that for this to go forward, it requires a better governance model, and we need to know what the costs are.

We're not pension experts. I don't expect that any of you around this table are pension experts. With the greatest respect to the wonderful staff at the Ministry of Municipal Affairs and Housing, they're not pension benefits experts, for the most part, either. We all need to know what pension experts think about this model, and we haven't, to date.

**Ms. Matthews:** I know you appreciate the fact that we're doing these consultations after first reading, which is pretty unusual, so it will allow us to do some of that work.

**Mr. Hopcroft:** Yes. We are most appreciative of that, but we'd feel better if we knew there were some commitments to further review after second reading, after some of the diligence that we've asked for is completed.

**Ms. Matthews:** I can assure you that we're taking comments from the deputants very seriously, that they include—

**Mr. Hopcroft:** And we would expect no less from one of our great members from the city of London.

**Ms. Matthews:** Thank you.

**The Chair:** This mutual admiration society has about a minute left.

**Mr. Hopcroft:** We were just getting started, Madam Chair.

**Ms. Matthews:** You raised the movement from 2% to 2.33%, which of course allows police and firefighters to retire at age 60. Do you have any problem with the notion that, in some fields, earlier retirement—

**Mr. Hopcroft:** Actually, they can retire at 60 now. This would enable them to retire five years earlier if they had their 30 years in.

**Ms. Matthews:** Yes, with full benefits.

**Mr. Hopcroft:** With full pension, yes.

**Ms. Matthews:** Do you have a problem with that?

**Mr. Hopcroft:** Well, it has obvious costs to it. We're concerned that, given the arbitration process hanging over all of our heads in terms of any true bargaining, inevitably we will see that happen, because of the way the system works for us right now. That's a bit of misnomer—it doesn't work for us right now. That has costs, and unfortunately we don't see any recognition of municipal taxpayers' ability to pay in any of the arbitration awards.

**Ms. Matthews:** Do I have time for one more?

**The Chair:** No, sorry.

**Mr. Hardeman:** I welcome the city of London. As we heard from across the aisle, it's a great city. As a suburb of Oxford county, we very much appreciate your existence there.

**Mr. Hopcroft:** And we certainly appreciate all the jobs that come from the county of Oxford.

**Mr. Hardeman:** Thanks. I just wanted to ask about the devolution. That's been an issue presented lightly by a lot of people. The answer from the government side is that it's because people were asking for it and that's why this is happening. The only presentation so far that has suggested the positive side of that was that presently, with the government running it, it took too long to make changes to the plan. It had to do with benefits for a pensioner's children as they were going through school. They wanted to change that so they could pay, but they couldn't because it took too long to get it through the system. Then we look in the bill and we find that the sponsoring body may not have meetings for up to three years. One would suggest that if you're going to get something through quickly, it wouldn't be with a body that has nine players and only meets once every three years to discuss the affairs of the organization.

What would you suggest, Grant, would be the positive side or the reason the government would want to devolve this to municipalities if it isn't to transfer the unfunded liability that the plan will eventually have?

**Mr. Hopcroft:** One can always speculate what any government's motives are for what it does. We're very concerned about the implications this bill would have for us, not just from the cost perspective but from the hidden consequences in terms of the consequences for our taxpayers. We're already seeing serious issues around costs for protective services crowding out other services



and our ability to fund those other services. This would just exacerbate the problem.

You mentioned the three-year provision, and yet, on the other hand, we see that if the sponsors corporation is unable to reach a decision within 30 days, it could automatically go to arbitration. For the issues we're dealing with and the significant consequences that has for the stakeholders, that period is too short. There needs to be more effort to reach a consensus of the corporation, which is one of the reasons we feel the unanimous or super-majority vote is so important.

**Mr. Hardeman:** The other issue of debate has been about the supplemental plans.

**The Chair:** You have 30 seconds.

**Mr. Hardeman:** The firefighters I've talked to have said they can't see any reason why, if we're going to have supplemental plans, they're not mandated, as opposed to just suggested. It says, "shall consider." Does that, in your opinion, mean they are being mandated?

**Mr. Hopcroft:** It certainly sets those two sectors apart from all the others in the context of the bill. If the bill is in fact about autonomy, we can't understand why any particular sectors are mentioned at all.

**The Chair:** Thank you for your delegation.

**Mr. Hopcroft:** Thank you very much for the committee's time.

#### INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

**The Chair:** Our next delegation is the International Brotherhood of Electrical Workers. Welcome. You will have 20 minutes. Should you use all the time, we won't have an opportunity to ask you questions, but should you leave time at the end, we will be able to ask you about your delegation.

**Mr. Patrick Vlanich:** Good afternoon. My name is Patrick Vlanich. On behalf of the International Brotherhood of Electrical Workers, I would like to take this opportunity to thank you for allowing us to share our views regarding Bill 206. Mindful of the hour, as well as those waiting to make their submissions, I will do my very best to remain true to the words of Franklin D. Roosevelt, who, when asked the key to success in speech-making, responded, "Be sincere, be brief, and be seated."

For more than a century, the International Brotherhood of Electrical Workers has represented members in the electrical and utility industries across North America. Today we are recognized as the largest trade union in that sector.

Our Canadian membership presently numbers just over 55,000 from coast to coast, with approximately 3,400 members working for local distribution companies (LDCs), which were formerly referred to as municipal electrical utilities, and municipalities across Ontario. Local 636 is proud to serve as the bargaining agent for employees at the vast majority of these workplaces.

Over time, our complexion has changed and the IBEW now represents workers in a variety of industries in both the public and private sectors. What hasn't changed is our commitment to improving the quality of life for these workers. That is precisely why we have advocated for an independent governance model for OMERS for many years.

On June 1, 2005, the government tabled Bill 206, and, while amendments are necessary, the IBEW supports many of the key features of this initiative. We believe the time has come to transfer sponsorship and control to the members and employers who fund the plan and share a vested interest in its continued success. Other large public sector pension plans in Ontario have long enjoyed the rights of autonomy, and we see no reason for denying such rights to OMERS.

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At the bargaining table, we seek fairness, justice and equality. With respect to Bill 206, we expect nothing more and will accept nothing less.

The IBEW supports the OMERS submission, which includes updated plan text, except on the issue of defined contribution plans. We believe that OMERS' recommendations on the key features of this bill will ensure that the integrity of the system is maintained, good governance practices are sustained, the plan can continue to provide superior pension benefits that meet the needs of future generations, the plan can continue to be managed and administered effectively, and there is an orderly transition to the new governance model.

During their election campaign, the Liberals encouraged voters to choose change. We now ask you to do the same with OMERS.

With the genesis of OMERS in 1963 came financial security and peace of mind for successive generations of workers who have retired over the past four decades. From humble beginnings, OMERS has now matured and grown into the third-largest pension plan in Canada. We would submit that the major reasons for the success of this plan are sound, well-balanced investment strategies, creative forward-thinking and unparalleled commitment to promote and protect the best interests of all plan members on the part of OMERS, which has acted as the administrator of the OMERS pension plan since its inception. There should be no question that they have the knowledge, expertise and talents necessary to ensure the continued growth and prosperity of the plan in the 21st century.

The IBEW agrees that amendments are necessary to Bill 206 in order for OMERS to effectively fulfill their duties as administrator. Our review of the bill has been conducted with this in mind. However, rather than looking at the technical aspects of the legislation, we have chosen to examine the bill from a more human perspective. As a result, we have identified those areas that we believe will most directly affect the lives of our members and their families. Accordingly, our commentary and recommendations will focus on the governance model, supplemental plans, making the transition,



solvency funding, plan flexibility and employer participation.

The objective of the IBEW in offering these recommendations is to put OMERS on a level playing field with other major public sector pension plans in Ontario, clarify the terms and conditions of the plan, minimize disruptions during the transition, clearly define the unique roles and responsibilities of the administration corporation versus the sponsors corporation, provide sponsors with flexibility for future growth, and ensure that the plan remains strong, viable and affordable.

While sitting as the leader of the official opposition, Premier McGuinty and the Liberal caucus endorsed a proposal for OMERS to become autonomous. We now call upon your majority government to remain true to your commitment and adopt the legislative amendments necessary for the full devolution of the plan in a way that best serves all interested stakeholders. It has now been more than three years since OMERS released a report that included a governance model which once received the support of your government, and it is attached. This model was the preferred choice of the IBEW.

In principle, we support the structure proposed in the bill which establishes a sponsors corporation that includes both fire and police representatives, an administration corporation and two advisory committees, each with equal representation from employees and employers, but we believe that amendments are necessary in order to uphold the underlying tenets of the legislation.

While broadly defined, the distinct roles, rights and responsibilities of the sponsors corporation and the administration corporation respectively must be more clearly delineated by the legislation to avoid any potential for conflict between these two independent governing bodies. More specifically, it should be made unequivocally clear in the legislation that the sponsors corporation is primarily responsible for plan design and/or changes and defining contribution rates to ensure that pension benefits are secure, and that the principal responsibilities of the administration corporation are administering the plan, overseeing all investments and at all times acting in the best interests of plan members.

The bill contemplates that, in addition to the major stakeholders identified for the sponsors corporation, there are seats for some 31 other organizations that will be appointed through a rotational process in descending order of plan members. The IBEW supports the OSSTF submission that unions and/or associations representing more than 1% of the active members in OMERS have permanent seats on that sponsors corporation.

However, further clarity is needed regarding the term of such appointments, and safeguards should be included in the legislation to avoid disruptions to the continuity of the plan that may result from major gaps as such terms expire.

It should be expected that disputes might arise, either within a corporation or across jurisdictions. Accordingly, a dispute resolution mechanism similar to that afforded the teachers' superannuation fund must be enshrined in the legislation.

One of the key features of this legislation includes establishing a framework to permit the establishment of supplemental benefit plans, which can be negotiated at the local level. This is an issue that has long been near and dear to the hearts of IBEW members, and we heartily endorse a recommendation that would allow the sponsors corporation to establish supplemental plans for others apart from police and fire. We believe this would provide OMERS with the flexibility necessary to meet the changing needs of all plan members.

Our members have, for some time, sought benefits similar to those available to police and fire members, and would no doubt welcome the chance to negotiate enhancements to the benefits offered by the basic plan. We recognize and agree that such plans would require additional contributions by both the member and the employer. Therefore, the legislation must make it clear that there will be no cross-subsidization between the basic plan and any supplemental plans that may be established.

We support the submission of OPFFA that the establishment of two independent supplemental plans, one for police and fire and one for all other members, respectively; that each guarantee a minimum threshold of negotiable improvements, as per the attachment, with each governed by a sponsor-advisory committee that meets at least once a year, must be identified in this legislation.

Upon receiving royal assent, the benefits available to be locally negotiated in the supplemental plans—the best three years; early retirement factors; accrual rate—must likewise be enshrined as part of the legislation at the time autonomy is granted.

Within our organization, demographic shifts have resulted in dramatic changes to our membership. Many now identify retirement benefits as the number one priority on their collective bargaining agenda. Unfortunately, under the present governance structure we are unable to even discuss improving their OMERS pension benefits with the employers.

In a free and democratic society, the right to self-determination through collective bargaining should be just that. By empowering all plan members through this legislation with the ability to negotiate supplemental plans, there will be no question as to the government's support of this fundamental principle.

Despite any differences that may exist between the proponents of this bill and those advocating against it, there can be no dispute that the transfer of responsibilities from the Ontario government to a sponsors corporation will fundamentally alter the way OMERS is governed.

In order to guarantee the success of this initiative, it is essential that the transition be well-executed and accomplished with minimal disruption. Every effort must be made to ensure that the transition is seamless and does not disrupt the payment of benefits or compromise OMERS investment programs.

To this end, the IBEW supports the bill as it contemplates current members of the OMERS board to continue



as appointees to the administration corporation. This includes a seat presently held by the IBEW. Their knowledge, expertise and understanding of the plan will be especially critical as OMERS prepares for the supplemental plans following proclamation of the bill.

Another integral part of a successful transition strategy is the assurance that current definitions will be carried forward or updated when the bill is proclaimed, since a number that are presently in the OMERS act do not appear in the bill but are critical to the administration of the plan.

On the legislative front, upon proclamation, OMERS should be excluded from the Municipal Act, with the Ontario Pension Benefits Act and the federal Income Tax Act becoming the governing statutes.

An undertaking of the scope and magnitude anticipated following passage of this legislation will inevitably result in significant start-up costs. Legislative restrictions presently prevent any sponsor costs from being charged to the plan. This begs the question as to who will bear the financial burden associated with the implementation of Bill 206. When the OPSEU pension plan was established and the teachers' pension plan was devolved from the government, funding was provided.

With that in mind, the IBEW believes that resources should now be made available to ensure that the costs incurred during the transition need not be paid by member contributions.

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Since its inception more than 40 years ago, OMERS has been a defined benefit plan and this remains the cornerstone of its success. Any hint that the legislation may allow OMERS to consider offering defined contribution plans causes us grave concerns. We remain steadfastly opposed to any attempt to undermine or compromise the integrity of the plan in such a manner.

Early in the new millennium, the perfect storm hit markets around the globe and resulted in the first funding deficit in OMERS history. In response, OMERS has taken steps to address the deficit in a way that minimizes the detrimental impact on plan members, adopting a tough but effective strategy that is designed to offset the potential for similar shortfalls in the future.

Nevertheless, plan members deserve, and rightly expect that, in the years following proclamation of the bill, the plan will continue to be affordable as well as fully funded, and that the pension benefits will remain secure. However, without legislated solvency relief, undue financial pressures may be placed on the plan and thus on the employers and employees who fund it. This issue is particularly relevant with respect to supplemental plans, which are funded separately from the main plan, since they could face extraordinary costs to meet solvency requirements, while no risk of bankruptcy or insolvency even exists.

The generic solvency funding rules defined by the Pension Benefits Act are designed to protect employees from private sector bankruptcies where such pension plans are too often underfunded. In contrast, public

pension plans, while not guaranteed, are funded either directly or indirectly by governments and therefore will not go bankrupt.

Forcing OMERS to fund solvency valuations using hypothetical windup provisions, may force it to increase contributions to an unreasonable level. This is not acceptable. To our surprise and disappointment, we have learned that Ontario is the only Canadian jurisdiction that requires public sector pension plans to fund solvency deficits. The time has come to exempt public pension plans from the Pension Benefits Act requirements, beginning with OMERS.

Affordability in the form of stable, competitive contribution rates is an essential feature of the plan. Securing solvency relief will contribute significantly to the achievement of the OMERS goal of maintaining this feature as part of their fiscal framework.

In Ontario, the workplace profile continues to evolve, with shifts in the labour force expected to continue over the next 10 years as more baby boomers enter their retirement years. The combination of demographic pressures and market forces, such as increasing immigration, worker mobility and a greater emphasis on part-time and contract employment, will result in new and different expectations from plan members.

In addition, retirement patterns have changed, with more people taking advantage of early retirement options but continuing to work. This trend will likely gain popularity now that the government has announced an end to early retirement. Naturally, this will cause the pension payroll to grow.

To meet the evolving needs of OMERS members, employers and retirees, Bill 206 should give the sponsors corporation the same degree of flexibility to respond to such changes as the Ontario government currently has as sponsor, and ensure that such changes are in compliance with the appropriate legislation. Following proclamation of the legislation, the sponsors corporation should have the authority to make any additional amendments to the plan.

No other pension plan in Ontario, either public or private, incorporates a cap on the pension entitlement, and yet Bill 206 imposes such limits on OMERS. If the province is sincere in its desire to divest itself of all interest in OMERS, the IBEW agrees with the submission by OPSEU that the legislation cannot include a cap. Otherwise, the alignment of ownership and control will not truly be conferred upon the sponsors corporation.

In a world where few employers continue to offer post-retirement benefits and such plans are often cost-prohibitive to those who need them most, legal authority must be entrenched in Bill 206 that would allow OMERS to provide related new, non-pension products or services that benefit plan members should the sponsors corporation wish to explore such opportunities. Such entitlement is already common in other jurisdictions across Canada.

Finally, the sponsors corporation should be authorized to designate associated employers in order to allow for



future growth and ensure continuity of enrolment for Ontario-based employers whose employees may be affected by deregulation and/or privatization, such as those in the electrical utility industry that we represent.

OMERS has provided families with income security and peace of mind through guaranteed pension benefits for retired members, best-in-class survivor benefits and solid protection for disabled workers that ensure financial security in times when things can often be at their most uncertain. It is incumbent upon this government to ensure that the legacy entrusted to you can now be passed on.

The IBEW believes that pension plan independence should not be a privilege but a right. OMERS, its members, employers and retirees have earned that right and deserve the same freedom as presently afforded other public and private sector pension plans. Those with a vested interest in the plan should be given the authority to determine how to build on past successes in order to provide pension security for themselves and future generations. Through Bill 206, this government has been given the opportunity to do just that.

We further believe that a properly crafted autonomous governance model will create a clear separation of responsibility for those overseeing it, help to expedite the implementation of plan changes, and allow greater flexibility for OMERS to introduce such changes and/or improvements.

The IBEW has put forward recommendations on the key features of Bill 206 that we are confident will ensure that the integrity of the system is maintained; good governance practices are well defined and sustained; the plan can continue to affordably provide superior pension benefits that meet the needs of both current and future generations; the plan can continue to be managed and administered effectively; and there is an orderly transition to the new governance model.

It was once said by Theodore Roosevelt that, "In any moment of decision, the best thing you can do is the right thing, the next best thing is the wrong thing and the worst thing you can do is nothing."

As you now take pen in hand to write what may very well be your page in history, we ask you to put people first and make your decision regarding Bill 206 based on the principles of fairness, justice and equality. It's just the right thing to do.

I thank you for your time.

**The Chair:** You've left about 30 seconds for each party, so I'm going to start with Ms. Horwath.

**Ms. Horwath:** I followed along in the presentation quite a bit, and there are a couple of notes I jotted down. On page 7, you refer to the end of mandatory retirement and the effect that's going to have on pension costs. Can you expand on that a little bit?

**Mr. Vlanich:** At the end of mandatory retirement there may be an increase in pensioners who are retired and continue to work, or others may choose to not retire. But I don't know if, under the current OMERS plan, they'll be required to continue paying into that plan. I apologize for not having exact information on that.

**Ms. Horwath:** It's my understanding that, under the mandatory retirement legislation—and I'm not sure about it either—employers won't be required to pay into pension plans on behalf of employees who are working over the age of 65.

**Mr. Vlanich:** Again, I can't answer that. I'm sorry.

**Mr. Duguid:** You indicated at the beginning of your statement that you were going to be "sincere, brief and seated." You were sincere and you were definitely seated. I'm not so sure you were brief. But you were very thorough, so I want to thank you for that. I'll thank you for your deputation, and we'll certainly take it under consideration.

**Mr. Vlanich:** Thank you.

**Mr. Hardeman:** Thank you very much for the presentation. It's very thoroughly done; objective, almost like an outsider looking in. It's not necessarily that all your members are in the OMERS plan, and so I appreciate that.

I just wanted to ask in broad terms, at the end you talk about Theodore Roosevelt and what's the best thing, the second best, and the worst thing is to do nothing. Why do you believe that doing nothing with this plan is bad, when it's considered one of the better plans in the province?

**Mr. Vlanich:** I believe that in its present form it is one of the best plans in the province and probably in the country, but there are some nuances that need to be addressed. I heard earlier on that you had commented about the lack of ability to put implementation quickly. I think that's a big hurdle.

We heard from a lot of our members during the premium holiday that they would have liked an alternative to that. I believe there is a slow process with respect to implementation of changes. I believe that some of the other questions that have been raised in this document likewise point to the weaknesses of the current governance model. I don't think it's a perfect model, and likewise I don't suggest that the change will be perfect, but I think the fact that the people who control the plan right now don't have a vested interest in it is a real problem for those who do.

**The Chair:** Thank you very much. We appreciate your deputation. It was thorough.

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## CITY OF TORONTO

**The Chair:** Our next deputation is the city of Toronto. Welcome. If you're all going to speak, could you identify yourselves for Hansard. If only a couple of you are, could you just identify who the speakers will be. After you get yourselves settled and you've introduced yourselves, you'll have 20 minutes. Should you leave any time, there will be an opportunity for us to ask you about your deputation.

**Mr. David Soknacki:** My name is David Soknacki. I'm chair of the budget committee at the city of Toronto. I have on my left Ivana Zanardo. She is director of



pension, payroll and employee benefits. On my right is Joseph Pennachetti, who is the chief financial officer and deputy city manager. They've given me the delight of going through the notes and making a speech, but if it comes to the hard questions, both of these folks will be happy to support.

Chair and honourable members, I'd like to thank you all for providing this opportunity to present our comments and concerns with respect to Bill 206. We especially appreciate the opportunity to speak after first reading. I know that's early and we appreciate that it's done in the formative stage.

The city of Toronto has long supported greater autonomy for OMERS. However, it's vitally important that these reforms ensure continued financial stability and long-term viability, fair and equitable treatment for all members, and a reasonable cost for members, employers and ultimately for all the taxpayers.

We will focus in our presentation on four areas: first of all, prudent and effective decision-making by the sponsors corporation; secondly, the sponsors corporation costs; third, equitable treatment for all members regarding the supplemental plans; and fourth, balanced and representative membership on the proposed governance bodies.

Bill 206 proposes creating a sponsors corporation to undertake important powers currently vested with the Ontario government. We are concerned that the bill prescribes access to binding arbitration/dispute resolution process simply if the corporation can't decide on the matter by a majority vote. The scope of arbitration proposed is broad, with no constraints when awarding supplemental plans.

After the transition year, the sponsors corporation could adopt whatever procedures it wishes to support effective decision-making and resolve conflicts.

In our view, it's important to foster and encourage a climate of consensus and collective responsibility. The transition needs to be a period of stability where no single sector or sponsor group has an effective veto or is rewarded should compromise fail.

We would request requiring a super-majority, if not unanimous agreement, as with some public pension plans, to ensure that fundamental changes had broad support and signalled prudence and stability.

We recommend amending the bill to require that all decisions of the sponsors corporation require a two-thirds vote. We also recommend allowing a truly autonomous sponsors corporation to devise its own dispute resolution mechanism by bylaw rather than having one prescribed in legislation.

We further recommend that the sponsors corporation may not, subject to some exceptions, such as utilizing surplus funds, implement changes in benefits for members or in contribution rates, by bylaw or otherwise for the first three years and thereafter no more frequently than triennially.

With respect to the sponsors corporation costs, we expect that the sponsors corporation will have a very

steep learning curve at the outset and crucial ongoing responsibilities. Members will need guidance and advice from a wide range of professionals. That's why we recommend that the government provide sufficient transitional funding to the sponsors corporation to cover start-up implementation costs. We understand that this was done when Ontario devolved the Ontario teachers' pension plan and the OPSEU pension trust.

We further recommend clear and appropriate authority for the administration corporation to pay certain sponsors corporation expenses as part of the pension plan's expenses, as well as part of any supplemental plan's expenses.

We next wish to speak to the possible stand-alone supplemental plans that can be specific to any particular employer or employers or to certain classes of employees.

There is conflicting opinion regarding the number of supplemental plans that may be established by the sponsors corporation or allowed by the Canada revenue agency regulation. As written, we understand that each of the 900 employers could have several different plans under different collective agreements with various employee groups. The administrative complexity and corresponding costs are potentially very high for supplemental plans and for the basic plan itself.

We understand that certain sectors such as police and fire would request additional benefits prescribed within Bill 206 itself, rather than by the sponsors corporation. These could include early retirement, increased accrual rates or higher average earnings.

While we haven't had the opportunity to fully understand the potential impact of possible pension enrichments, just the use of fire and police as sectors indicates that a change from 2% per annum accrual to 2.33% would cost Toronto \$12 million annually; a change from the final five years' to the final three years' average earnings could cost \$13 million annually; and a change in the early retirement factor from 85 to either 75 or 80 would cost between \$12 million and \$30 million annually. What we've prepared is a preliminary set of figures that we'd be prepared to share with you, providing a number of scenarios in terms of reductions, age factors and assumptions, with solvency funding or not. We would be happy to share them with you. Suffice it to say that all of these impacts are in the millions of dollars for the city of Toronto and its taxpayers. As Bill 206 doesn't provide additional funding to employers, municipalities would need to raise taxes, cut municipal services or look to the province for relief to cover these added costs.

OMERS serves a highly diverse range of employers, with employees in even more diverse occupations and professions. One of OMERS' key strengths is requiring all employers and employees to contribute exclusively to the plan, sharing equitably in the benefits and costs. OMERS' current arrangement has demonstrated considerable flexibility by accommodating the special needs of certain occupation groups, such as an NRA 60 for police and firefighters, within the one basic plan. The



result is a plan that's highly regarded, easily understood and efficiently administered, with balanced consideration for all stakeholders. A truly autonomous sponsors corporation should be allowed to continue this approach.

We recommend that Bill 206 be amended to eliminate specific references to members employed in the police and fire sectors. We also recommend that Bill 206 not be further amended to prescribe supplemental plans or optional benefits under the legislation or to require the sponsors corporation to consider specific issues regarding any one stakeholder group.

With respect to balanced and representative governance, OMERS is currently managed by a 13-member board, balanced between plan members and employers. Under Bill 206, the new sponsors corporation's first panel would have 16 voting and two non-voting members, all appointed. We don't know how the province intends to consult with sponsors regarding these appointments. We trust they will maintain equal employee-employer representation. Nevertheless, after the first year, the bill stipulates a default regime for the composition and manner of choosing sponsors corporation membership. This regime stays in effect until the sponsors corporation adopts a bylaw change.

The bill currently provides no restrictions on composition, such as requiring employee-employer equity, or that any specific employee or employer group be represented. Particularly with decisions under the bill requiring only a simple majority, we are very concerned about the ongoing fairness and stability of the new structure. We recommend that the bill be amended to require the sponsors corporation and administration corporation to have equal employee and employer representation at all times.

With more than 24,000 member employees, the city of Toronto is by far the largest employer in OMERS. The default governance regime explicitly identifies the Association of Municipalities of Ontario as the municipal employers' representative on the two corporations and advisory committees. As Toronto is not a member of AMO, Toronto cannot be represented by members chosen by AMO, and despite being the largest employer, Toronto would only appoint members to the new corporations on a rotating basis with all other employers, no matter how small. Given Toronto's size and capacity to contribute to the new structure, we recommend that Bill 206 be amended to provide explicitly for the city of Toronto to choose two members on each of the sponsors corporation and the administration corporation and one member on each advisory committee.

In conclusion, OMERS has grown to play a vital role in the lives of hundreds of thousands of Ontarians and in the province's prosperity. We must ensure that changes in governance or the plan itself build on the success prudently, equitably and effectively. Taken together, the amendments we recommend will go a long way to ensure the financial stability of the plan, fair and equitable treatment of all members and the containment of costs. Simply put, OMERS is just too big and too important not to take the time and careful consideration to get it right.

Thank you, Madam Chair, and members of the committee.

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**The Chair:** You've left about three minutes for each party, beginning with Mr. Duguid.

**Mr. Duguid:** Thank you, Madam Chair, and thank you, Mr. Pennachetti and Councillor Soknacki, for taking the time to join us today and make a very thorough presentation to us.

Councillor Soknacki, I start by thanking you for the good work you do as chair of the budget committee in this city. I know how challenging that task is, and many of us are very grateful that you're the one at the helm, showing the leadership in that area, because I think our budget, as challenging as it is, is in good hands. So I thank you for that.

I guess I'll go back to one of the issues that you raised. There are two points that I want to make. One is the cost estimates that you've come forward with, and a 3% tax increase suggestion. My understanding is, and correct me if I'm wrong, that that estimate is really based on a worst-case scenario where there's a 100% take-up of all the benefits. We've had the fire association appear before us, and I think the police association would probably say the same thing, that there's no intention in their area—they know that their employees couldn't afford to take up all those benefits. So it's a totally worst-case scenario and it's something that's completely unrealistic. I just want to point that out to you, and maybe you could tell me if you're basing your cost estimates on 100% take-up.

**Mr. Joseph Pennachetti:** This is those three items that we highlighted: the accrual for \$12 million, the five years to three years for \$13 million, and either going 75 or 80 in terms of early retirement factor—that is from \$12 million to \$30 million. These costs were only for police and fire; I want to emphasize that. They did not include if it went beyond that. I know that some others are quoting for all employees. If we went to all employees, you can look at way more than doubling that number.

**Mr. Duguid:** The other question I have is—

**Mr. Soknacki:** If I could add, if you don't mind, Mr. Duguid—I was going to call you Councillor Duguid—Ms. Zanardo has done a number of options with various costings, and we'd be happy to share that information with you, just to make sure that our assumptions are on the table.

**Mr. Duguid:** I appreciate that.

**The Chair:** Thirty seconds.

**Mr. Duguid:** Thirty seconds—I'm just judging by what you've commented on. The city of Toronto is not in opposition to devolution of OMERS. They support that, from what I can see here.

**Mr. Soknacki:** In principle, yes.

**Mr. Duguid:** It's a question of things like representation on the sponsors committee and admin committee and things like that—that—

**Mr. Soknacki:** I think that in terms of broad-brush we have significant concerns on the issue of the binding



arbitration and giving the sponsors corporation actually the devolution, the decision to go ahead. We feel that that's absolutely critical.

**The Chair:** Thank you. Mr. Hudak.

**Mr. Tim Hudak (Erie-Lincoln):** Thank you, Councillor and folks from the city of Toronto, for your presentation today. I just want to run through some quick questions in the time given. You will share the data, too, that I think you said that you had handy, with committee members. I don't really think that the OMERS projections are a worst-case scenario. I think, from what we've heard from various committees, they're actually a pretty realistic expectation of the 3% property increase.

You talked about the importance of having a two-thirds majority vote minimum for changes in the plan. The Toronto police board was here earlier on, and they gave an indication that similar plans, whether they be in BC or Alberta, or even within the province of Ontario, require unanimity or three quarters, I think, in the Alberta model. Can you tell us why you think it's important to have that kind of super-majority? Is it a deal-breaker? If that doesn't change, should the Legislature reject the legislation as currently written?

**Mr. Soknacki:** We think that is a deal-breaker. We feel very strongly that if you balance the board on the sponsors corporation 50-50, you will need a super-majority in order to make these decisions. I guess we're going to be facing the decisions from the sponsors corporation when it comes to the city in terms of costs. We're very concerned about that. That's why we need to have a super-majority on it.

**Mr. Hudak:** As AMO said, it's a \$36-billion pension with 900 employers and 335,000 members of the plan. It's not something that you should tinker with. You had mentioned earlier some concern about the arbitration/mediation model that has been set up. You did, in your comments, though, Councillor, talk about the importance of developing a consensus early on. Why do you think the arbitration model will work against having consensus on the sponsors corp?

**Mr. Soknacki:** The reality of arbitration, certainly in our experience, has been that it is a very, very costly exercise, and it's not a path that the city of Toronto wants to go down unless it is absolutely the last, last option. Simply to have a decision, if the sponsors corporation can't come to a consensus, to automatically go to arbitration, in our view, moves it to arbitration too quickly. It would be our preference—that's why we would favour a super-majority; that's why the police services board would favour three quarters or unanimity; that's why that's absolutely very important to us.

**Mr. Hudak:** As a bottom line, then, Councillor, if the bill is not substantially changed along the lines that the city of Toronto recommends, do you suggest members should vote it down?

**Mr. Soknacki:** That would be our recommendation, yes.

**Mr. Hudak:** Any more time, Chair?

**The Chair:** I can't believe you've left 20 seconds.

**Mr. Hudak:** I'll share that with my colleague Ms. Horwath.

**Ms. Horwath:** We talked a little bit about your assumptions, but I'm wondering, is it your experience in negotiations and bargaining for collective agreement improvements that oftentimes there will be a give-and-take between demands for wages and demands for pension improvements, for example? Is that your experience?

**Mr. Soknacki:** That's correct, yes. It's part of the overall package.

**Ms. Horwath:** Absolutely. I come from the municipal sector as well, so I recall that. That's what I'm getting at, though. So your assumptions here—did they take that into consideration when you did your figures and your analysis indicating the drivers that would end up in the kinds of tax increases at the municipal level that you're bringing forward here?

**Mr. Soknacki:** The numbers that we quoted are simply for this issue, not for anything—

**Ms. Horwath:** OK, so the assumption is that 100% on year one is what these drivers would be, so they would get up not from 2% to 2.1% or 2.15% or 2.25% over a time frame; that immediately, in your first set of negotiations, you'd go from 2% to 2.33%; similarly, you would go immediately for a set of negotiations, same year, from 5% to 3%, and so on and so on.

**Mr. Soknacki:** That's correct.

**Ms. Horwath:** Is that realistic, that your fire or police would be able to achieve those kinds of improvements in one year of negotiations?

**Mr. Soknacki:** I think that is something that would be negotiated. You're correct that it may not be all in one year. Again, the issue to us is also the potential for impacting the rest of the bargaining units as well, which we're also concerned about.

**Mr. Pennachetti:** We've brought as well, Ms. Horwath, just to make sure that we have a full range of things before you, tables showing various assumptions. We just had the chance in the presentation to highlight a couple, but we have the full range of figures. It's up to your committee to decide whether it's realistic or not.

**Ms. Horwath:** Can I just ask, then, on your list of actual recommendations—can I get you to flesh out recommendation 5 a little bit? It says to "provide clear and appropriate authority for the administration corporation to pay certain sponsors corporation expenses." Could you identify for me if there are certain ones that you think are appropriate and certain ones that, more importantly, you don't think are appropriate—and similarly in terms of the supplemental plan expenses?

**The Chair:** You have 30 seconds to answer that, just so you know.

**Mr. Soknacki:** What we did in the speech was mention things like actuaries, lawyers, consultants and the like. If it's not picked up in the administration corporation, then it falls to the employers to pick it up, and that would be our concern.

**Ms. Horwath:** OK. Thank you, Madam Chair.



**The Chair:** Thank you very much for being here today.

**Mr. Hudak:** Madam Chair, if I could—I know Mayor McCallion is on hand. I did want to put a question on the table, if I could.

**The Chair:** Can you save it till the end of the meeting, so the whole committee can deal with it then? I really don't want to delay any of our witnesses.

**Mr. Hudak:** I will be very brief, Chair.

My colleague Mr. Duguid just said that the projection that the city of Toronto and AMO brought forward was a worst-case scenario. We were provided today, through OMERS, their calculations of some expected benefits as part of supplemental agreements that came to the \$380 million, the 3% property tax increase that AMO and other municipalities were talking about. I do want to note for the record that there are a number of things that aren't recognized in that submission—for example, past service by fire or police officers, increased contribution for future years, potential increase in post-employment benefits etc.—it's on the document. So it's hardly a worst-case scenario. There are a lot of other benefits that could be included to drive rates up more.

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**Mr. Duguid:** On a point of order, Madam Chair: Is this a speech or is this some kind of point of order?

**The Chair:** Excuse me. I think you were going to get to a question, were you?

**Mr. Hudak:** Exactly.

**The Chair:** OK, can you get to the question?

**Mr. Hudak:** Don't delay me any more. I'm getting to my question.

The parliamentary assistant who described the OMERS report as a worst-case scenario—does the ministry have its own set of numbers, and if so, could you present them to the committee, that give the true scenario?

**Mr. Duguid:** I think we've made it clear, and members probably heard me in questioning witnesses, that in fact when we're looking at 100% take-up, that's a worst-case scenario. Now, there may be other costs as well in terms of administration costs, and that's why we're here today: to hear the depositions from various parties, to find out what other impacts or implications may exist with regard to this legislation.

In terms of our own numbers, our own numbers are the numbers that are in front of you. The OMERS board—we're going by their numbers as well. They're the professionals in this. We're certainly taking a look at their numbers. The thing is, we're not assuming 100% take-up, because that would be a totally unrealistic assumption.

**The Chair:** Mr. Hudak, just so you know, these are AMO numbers, not OMERS, I think.

**Mr. Hudak:** I appreciate that, but I think OMERS did a survey of the municipalities.

**The Chair:** Are you getting to the question?

**Mr. Hudak:** I simply asked the parliamentary assistant if they had their own numbers at the ministry. It sounds like no, they don't.

**The Chair:** I think he gave you an answer. We will have our next delegation—

**Mr. Hardeman:** Just on a point of clarification on the point of order, Chair: I think the parliamentary assistant ended his presentation saying that the numbers that they were using were in fact not the worst-case scenario. I wondered if I had those numbers, when he said the numbers they were using. I see nothing in my documentation here that gives me any numbers.

**Mr. Duguid:** The numbers I'm referring to are the numbers in the OMERS presentation—whatever numbers they brought in when they were here.

**Mr. Hardeman:** OK. I thought he was referring to ministry numbers, and I don't have any.

**Mr. Duguid:** No, there's no other set of numbers anywhere other than the ones that are in front of us. But certainly I'll ask our staff if there are any other numbers floating around out there and I'd let you know, but I've never seen any.

**The Chair:** Committee, you have another handout, just recently, another supplementary, that Toronto gave us following their presentation.

#### CITY OF MISSISSAUGA

**The Chair:** Our next delegation is the city of Mississauga.

**Ms. Hazel McCallion:** Thank you, Madam Chairman, for giving us the opportunity.

**The Chair:** Thank you. Before you begin, are you going to be the only speaker?

**Ms. McCallion:** No.

**The Chair:** OK, perhaps you could introduce the group you have with you, and when you begin you have 20 minutes.

**Ms. McCallion:** To my left is our city manager, Janice Baker, and to my right is our director of human resources, Eric Draycott. I will make the presentation, but they're the experts in answering questions.

Thank you for this opportunity to present to the standing committee on general government the position of the city of Mississauga regarding the Ontario Municipal Employees Retirement System Act, 2005, Bill 206. The city of Mississauga does not support the proposed amendments to the Ontario Municipal Employees Retirement System Act. In fact, we believe Bill 206 fails on matters of cost impact and on governance. In our opinion, hasty implementation of this legislation by the government would be reckless and irresponsible.

I think at the AMO convention in August, just to add, I advised the cabinet who sat there that it would be a good idea if they did their homework so that we could then be able to deal with the issue.

We believe any legislative changes to OMERS must be carefully considered, due to the potential financial impact on municipalities. It could result in the most



major downloading that has occurred to date. Given the many fiscal challenges Mississauga is facing today, even though we are in a very sound financial position, this additional pressure will hinder our ability to maintain existing services, replace infrastructure and provide any new services.

The city of Mississauga fully supports the position of the Association of Municipalities of Ontario in its opposition to the amendments proposed in Bill 206. AMO has been very straightforward for the last two years in advising the government, "You'd better be careful on this and you'd better do your homework." Further, we believe this legislation requires far more in-depth study and open dialogue to ensure due diligence has been met.

What are Mississauga's specific concerns with the bill? The city's position on this bill is that it contains several provisions which are inappropriate and go much further than the originally understood purpose, which was to deal solely with the matter of a transfer of governance from the province to plan members. Therefore, we believe the bill should be substantially amended to deal solely with the sponsors corporation, and all reference to supplemental benefit improvements, the establishment of a mediation/arbitration process and so on should be removed.

In particular, the following areas need to be addressed: With respect to plan governance, we strongly feel that all decisions of the sponsors corporation should require unanimous agreement or total consensus of all members in order to attain approval. I might add, if it isn't unanimous, it had better be two thirds. This will protect the interests of both employees and employers.

We strongly recommend that all reference to the mandatory mediation/arbitration of disputes be removed from the bill on the basis that it is adversarial in nature and not an appropriate process for determining plan changes, will add additional costs for plan members, and could potentially devolve governance of the OMERS plan into the hands of an arbitrator. We have not had much success with arbitrators, and to turn the governance of a complex pension plan like OMERS over to an arbitrator process is completely unacceptable to us—unaccountable and not elected.

With respect to supplemental benefits, we recommend that reference to supplemental plans be removed from the bill, as these are not, in our view, related to governance and are an area that a properly constituted and functioning sponsors corporation can address if the corporation deems it appropriate to do so. Such plans clearly have the potential of adding significant costs for members and employers alike. We also recommend that reference to supplemental plans for police and fire, including a 2.33% accrual rate, be removed from the bill, in view of the fact that they are not related to governance, will be extremely costly, and that the determination of whether or not such supplemental plans are to exist should be the responsibility of the sponsors corporation.

Beyond the foregoing, in view of past experience, we are very concerned that supplemental plans for groups

like firefighters will find their way to the interest arbitration process, where decisions have historically been made that do not consider a municipality's ability to pay. The process hasn't worked and doesn't work.

I would like to make a few brief comments about our city. During the last 30 years, Mississauga has seen tremendous change, growing into the sixth-largest city in Canada. Since its incorporation in 1974, Mississauga has become a distinct major Canadian city with a population of 680,000. It is considered a municipal leader in fiscal responsibility, technology and urban development.

However, during recent years Mississauga, like all other municipalities across Ontario, has experienced significant pressure to maintain existing services, provide new services and deal with large infrastructure deficits without placing undue burden on taxpayers. The city is also facing slower assessment growth and declining provincial grants, not that too many exist. Just as critical, increasing demands to fund growing health and social services expenditures are being felt on the property tax base, including the \$44 million that we send to Toronto every year for their social costs. These costs should not be on our property tax, but should be uploaded to the province. We need more uploading, not more downloading.

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From 1961 to 2002, municipalities' share of total infrastructure in Canada grew from 31% to 52%, while both the federal and provincial shares declined. As the city of Mississauga matures, the cost to repair, replace and rehabilitate the city's infrastructure must be assumed by the taxpayer. In Mississauga, we have identified, through our asset management study and related financing strategy, over \$500 million in additional unfunded capital needs over the next 10 years.

Recently, we have been forced to dip into hydro reserves which had been set aside to deal with future unseen or unavoidable rainy day situations. We have now concluded that those rainy days are here and that the reserves will have to be spent in our capital and operating areas just to keep pace with day-to-day expenditures and maintain taxes at reasonable levies.

While the SuperBuild program, the Strategic Investment Financing Authority and the sharing of gas tax revenues has assisted municipalities in the short term, the proposed changes to the government structure of OMERS causes significant concern for the municipalities regarding the future administration of the OMERS pension plan and its costs. It is expected that higher costs for municipalities, employees and, more importantly, the taxpayers will surely result from this new legislation.

Our total OMERS contributions for 2006 are estimated at \$16.9 million and represent 7% of Mississauga's tax levy. This includes an OMERS contribution increase in 2006 of \$2.3 million, a tax increase of 1.05%. Additional increases are expected in future years. At \$4.7 million, fire services represent 27.6% of the city's total OMERS budget. We estimate that a 2.33% supplemental benefit plan for firefighters alone would cost an extra



\$1 million annually and would certainly affect our tax increases.

OMERS employers can expect to experience pressure from employees, particularly the police, fire and paramedics—negotiations which are just down the road—to agree to provide supplemental benefits if Bill 206 is enacted. This will undoubtedly have future impacts on all seven union groups as well as the non-union group within our municipality.

The city of Mississauga believes that any legislative changes to OMERS must be carefully considered due to the potential financial impacts on the municipality. Given the many fiscal challenges we are facing today, this additional pressure will hinder our ability in the future to maintain existing services, replace infrastructure and provide new services.

In more general terms, and in the interests of time, we seriously question why any change in governance is necessary at all; whether or not the province understands how the diverse nature of OMERS makes it different from any other pension plan; why the ability to establish defined contribution plans as possible supplemental plans will not be allowed; and why the sponsors corporation dispute resolution process contained in the bill is being proposed.

The effects on municipal services: The increased costs of benefits such as for supplementary plans and operation of the sponsors corporation which plan members and employees alike will have to shoulder, estimated at \$5 million to \$10 million for start-up, will ultimately affect the ability of municipalities to afford to do many things, including the hiring of new municipal staff or delivering new or improved services. Staff pension cost pressures will drain funding away from key municipal priorities, such as infrastructure maintenance and investment, two priorities identified by this provincial government.

By increasing municipal costs without providing a corresponding increase in municipal revenue, Bill 206 complicates efforts to ensure that Ontario's communities are served by municipal governments that have the resources needed to fulfill all their responsibilities.

In closing, I want to say that Mississauga is concerned that the province is rushing to reform one of Canada's most important pension plans without a reasonable understanding of the potential repercussions and without sufficient regard to the best interests of employees, retirees, employers, communities, taxpayers or Ontario's economy.

In fact, this government is very concerned about tax increases. Well, what you may do with OMERS and changes to OMERS is you've increased the taxes at the lower level, and that's increasing taxes.

By the way, I might mention—it's not in our presentation—that I believe OMERS is in a \$2.5-billion deficit. This year they are asking us for a 9% increase in employer costs and of course a 9% increase in employment costs. So the plan is not in good shape, I would think, with a \$2.5-billion deficit. I think that should be looked at.

While the devolution proposal would eliminate the province's governance role in OMERS—I know that in the past the province—not this government but others—used to finance many of their projects by borrowing from OMERS at a lower rate than they should have gotten in the market, and I remember that well; I've been around too long—I believe it should retain a strong interest in ensuring that the fund is strong and viable.

OMERS is one of Canada's largest pension plans. With \$36 billion in net investment assets, it is roughly equal to 8% of Ontario's GDP. In addition to protecting the future well-being of its employee members, thousands of retired Ontario public servants depend on it as their primary source of income. It is also a prominent investor which contributes to the economic fortunes of the province and Ontario's future prosperity.

Given the magnitude and implications of this legislation, I believe due diligence is required to ensure that the plan remains viable, that benefits are affordable and that taxpayers' best interests are protected. As it is written, Bill 206 could cost employers, employees and taxpayers dearly in the years and decades to come.

I urge you to think about the fact that much has changed about the environment since the matter of OMERS devolution surfaced in 2002. AMO has been very up front in saying on so many occasions: "Do your homework. Give us the cost factors." Has the province done their homework in providing us with the impact of the changes they have proposed in Bill 206? Nothing has come forward.

Compared to most private sector plans, OMERS in its current form is seen by many as a Cadillac plan, comparatively speaking. Municipalities frankly do not see the need for the changes being proposed, so I ask you, why proceed?

On behalf of the council of the city of Mississauga, our employees and retirees, and with the full support of our municipal peers across Ontario, I ask that you ensure that the government has done its homework before proceeding with the devolution of OMERS. Specifically, we ask that you request actuarial analysis regarding the potential cost of the proposals within Bill 206—I think that's a reasonable request—that you call for adequate due diligence to protect the long-term financial stability of the OMERS pension plan, and that you ask the Minister of Municipal Affairs and Housing how the public interest will be protected in the future if the bill continues to rest on simple majority and mandated and binding arbitration.

Before the province withdraws from OMERS, the legislation and the transition must be right, given the importance of OMERS to employees and the provincial economy.

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In summary, all we ask is, please do the homework before the bill proceeds any further. The impact on the municipalities of the many things that have happened, especially in fire and police, is that finally you will bankrupt the municipalities with the downloading. In my



opinion, this is the most major downloading on the taxpayers and the municipalities that has ever occurred, if the supplemental plans and the plans that you intend go into operation. If you're going to devolve it, then leave it to us to decide how it should be operated and don't set all the guidelines.

It's like when you did MPAC. The Harris government decided they were going to take over assessment. The only change that was made was that they used to pay for assessment and now we pay for it. They set all the policy and we have no control over it, except that we pick up the tab—another downloading that has had another major impact on the property tax of Ontario. This is going to do the same. How much more we can take, I don't know—I really don't. For a city as financially sound as we are, this could be the straw that breaks the camel's back.

**The Chair:** You have left about two minutes, so about 30 seconds for everybody, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much, Mayor McCallion, for your presentation. One of the things I wanted to touch on, and I've been trying to bring it forward, is the reason for the bill appearing before us. You mentioned in your presentation the financial condition of the OMERS plan today. It would appear that, after much discussion a couple of years ago about the devolution, we've picked now to do it, more to answer the problems of the finances of OMERS than to deal with the request two years ago for devolution. I just wanted to reiterate that, and maybe you could make a comment about it, that there's a concern about the cost of the OMERS plan after the devolution. I'm using the word "downloading." I'm now on this side of the House; I can use it a lot.

**Ms. McCallion:** Well, you folks, as Conservatives, did a pretty good job on us.

**Mr. Hardeman:** Exactly. It's nice to be able to pin it the other way.

**Ms. McCallion:** Quite honestly, we'll never recover from the downloading that occurred: social housing, the elimination of all transit subsidies, you name it. We won't recover, and it concerns me.

It's interesting how we had a vacation on OMERS contributions—how many years ago?

**Ms. Janice Baker:** For four years.

**Ms. McCallion:** For four years, and now we're getting a big increase. That doesn't sound like good management to me, but I don't know.

**Ms. Horwath:** I just wanted to ask a question related to the concerns about the cost increasing. When we had the fire people here, they indicated that they felt that because the plan is jointly paid into, that would be one of the checks and balances that would prevent quickly skyrocketing increases in the supplemental plans, for example. The members would have to pay, as well as the municipalities, so that would keep a cap on, or it would at least keep a natural check and balance, because the members themselves aren't going to want to have huge

deductions off their pay to pay into the OMERS plan. Can you comment on that at all?

**Ms. McCallion:** Well, I can't speak for the members; I can only speak for the employer.

**Ms. Horwath:** But I mean in terms of the principle of there being a natural kind of check and balance in that system.

**Ms. McCallion:** I think the way it's set up, a 50-50 representation, all it needs is for one person to arrange to stay home that day or be sick and the supplemental plan could go into being. It's very dangerous to be administering a \$36-billion plan and have a simple majority vote. It's unacceptable. In fact, it would be dreadful if it ever went through that way. We're with AMO in saying it should be unanimous, but I'll tell you, if it's not two thirds of the vote, then kiss the municipalities goodbye. That would have a major impact.

**Mr. Duguid:** I want to thank Her Worship for taking the time to be here with us today. I've had an opportunity to speak to her on this issue. She has bent my ear on this one a few times over the last little while, and I appreciate her input.

I appreciate the discussion, although I would take issue on a few points. Referring to this as downloading is totally inaccurate. The province isn't saving any money by doing this. Downloading of costs is downloading of costs. We're not downloading any costs; we're just providing autonomy here. That doesn't mean that there may not be costs to the municipalities—

**The Chair:** Mr. Duguid, your time is 30 seconds.

**Ms. McCallion:** I didn't say "downloading of costs"; I said "downloading." You're making the decision; that's downloading something on us without our approval.

**Mr. Duguid:** I think our time is pretty much up, anyway. My apologies.

**The Chair:** Your time has expired. Thank you, Your Worship. We appreciate you being here today.

## CANADIAN AUTO WORKERS

**The Chair:** Our last delegation for today is the Canadian Auto Workers. Welcome. Are you Cara MacDonald?

**Ms. Cara MacDonald:** Yes.

**The Chair:** We have your handout. When you begin, you have 20 minutes. Should you use all the time, there won't be an opportunity for us to ask questions. You are welcome to start when you want.

**Ms. MacDonald:** My name is Cara MacDonald. I'm the national representative in the pension and benefit department in the Canadian Auto Workers union. We appreciate the opportunity to comment on Bill 206. We represent a quarter of a million people in various sectors of the economy across Canada. About 3,300 members that we represent are in municipally regulated workplaces in Ontario: transit, hydro, homes for the aged and paramedic services. That's roughly about 1.46% of the OMERS total membership.



We have some concerns with Bill 206. While we're encouraged that the government recognizes the need for autonomy, we feel that Bill 206 is the wrong way to achieve this. We feel that the bill is deeply flawed, that it will have a detrimental impact on our members' pensions and that the model is unsustainable for the future.

I'm going to be very brief. We have a number of concerns that are detailed in our submission. I'm just going to touch upon three main concerns: (1) with regard to the benefit limitations in the bill; (2) with regard to representation; and (3) with regard to the inability of stakeholders to take ownership of the plan.

With regard to the benefit limitations, as you know, Bill 206 imposes a 1.4% benefit cap. OMERS is currently at 1.325%. This is well below the Income Tax Act maximum, which is 2% over the best three years, and it's also well below the standards that we've seen in other public sector pension plans, such as the teachers', where their benefit level is at 1.55%, and HOOPP, which is the hospitals, at 1.5%. We're also concerned with regard to benefit limitations, the strict funding guidelines that are in the bill which limit when benefits can be improved. There's a requirement of a 5% contingency reserve. These kinds of limits are not imposed on any other public sector plans that we're aware of.

One of our key recommendations with regard to this bill is that sections 12 and 15 be eliminated. In our view, to achieve real autonomy, the OMERS stakeholders must be enabled to determine the terms and conditions of the plan within the guidelines set out by the Ontario Pension Benefits Act and the Income Tax Act.

Our second main concern with regard to Bill 206 deals with representation. As you know, there are certain members who are proposed for representation for employee and employer groups on both the sponsors corporation and the administration corporation. We feel that those numbers don't reflect the size or the composition of the plan membership, and we also feel that Bill 206 limits representation to too few unions and employer groups.

I think one way to address this would be adopting something like a 1% threshold limit, where employee groups and unions with 1% or more of the membership would have some form of representation on both the sponsors corporation and the administration corporation.

**1800**

We also have concerns with regard to the method of appointing representatives from the so-called other unions or small union groups. We feel that the method is unfair and overly cumbersome. That's whereby each employee group and union has an opportunity, regardless of their size, to appoint somebody to the sponsors corporation or the administration corporation. We propose, instead, a system whereby the smaller unions and the smaller employee groups could come together in a coalition to select who they want their representatives to be on those corporations.

Finally, our third main concern has to do with ownership. I think the key problem with Bill 206 is that it imposes a model on stakeholders which no one seems to be

happy with. Many of the concerns that we've expressed in our submission, when you have an opportunity to review it, are also concerns that have been expressed by many other unions and employee groups, and also some employer groups as well.

If we look at where we were before, before the bill was introduced, for some time now the stakeholders have been requesting a forum where the employee groups and the employer groups could come together and discuss what kind of model would best be suitable for them, a structure that they could live with and where the OMERS board would provide some sort of technical support as opposed to leading the discussions. For some reason, this request has been overlooked and ignored. I guess our concern is that if this bill is imposed, there's going to be very little incentive to make this model work.

In conclusion, if the CAW-Canada had a choice between the status quo or Bill 206, we would choose the status quo, even though there are problems currently with the status quo. But we would much prefer, ideally, that the government bring the parties together to discuss the development of a new model using Bill 206 as the foundation for discussion. Thank you very much.

**The Chair:** You've left about four minutes for each party to ask questions, beginning with Ms. Horwath.

**Ms. Horwath:** Good afternoon. Were you here for any of the employer-side presentations that have occurred over the last couple of sessions?

**Ms. MacDonald:** Have I read them?

**Ms. Horwath:** Are you aware of them?

**Ms. MacDonald:** Yes, I am.

**Ms. Horwath:** What would be your opinion on the assertion that the costing out of improvements to the pension plans, as has been asked for by most of the union presentations, would bankrupt municipalities and immobilize them financially?

**Ms. MacDonald:** I haven't seen any of the cost estimates and the CAW-Canada hasn't calculated any projected estimates. However, I think that any potential cost would also have to be borne by the plan membership given that plan members pay 50% of the contributions. So that definitely would result in some sort of a balance.

**Ms. Horwath:** You talk about the preference to not go forward if this process doesn't result in something that's appropriate from the perspective of the brief that you've provided. Would you say, then, that if we can't come to something that would be agreeable to most stakeholders, then the best thing to do is to vote it down and then continue on with some other process to come to a resolution that meets the needs of most plan members? Is that your position?

**Ms. MacDonald:** The CAW-Canada position is that Bill 206 is highly flawed. It could, however, provide the basis for discussions if the government were to pull the parties together and allow us to be able to discuss the terms and conditions of the plan. I understand that this has been done in other jurisdictions.

**Ms. Horwath:** Interestingly enough, the minister in his opening remarks claims that that process took place at



some point in 2002. Are you aware of what process did take place at that time and whether or not it was satisfactory?

**Ms. MacDonald:** The process was highly flawed, and we submitted our objections about the process to the government. Basically, what transpired was that the OMERS board solicited submissions from the various stakeholders in terms of how they would like to see the model developed, and rather than pull the employer and employee groups into the same room as we had requested, they actually kept us separate. At the end of the day, after looking at all of our submissions and not being able to have a table for negotiations, the OMERS board submitted to the government its proposed governance model structure, which none of the stakeholders had agreed to. This was submitted to the government as if there was a consensus on this.

**Ms. Horwath:** So the initial discussions don't reflect at all an appropriate process for parties getting together and coming up with a common table for discussion.

**Ms. MacDonald:** No. Also, if I can add to that, in this flawed process that I'm describing, the OMERS board basically led the discussions. They didn't sit back and allow the stakeholders to discuss what forms and models would be appropriate for them. This discussion was led by the OMERS board rather than them taking a more passive role and sitting back and providing some sort of technical support.

**Ms. Horwath:** So then in controlling the process, they controlled the results.

**The Chair:** Thank you. You've exhausted the time. Mr. Duguid.

**Mr. Duguid:** In light of the time, I won't be asking any major questions. I want to thank you for being here today, and I want to thank you for what is a very thorough presentation.

One of the reasons we came forward at this time, after first reading, is that it's a complex piece of legislation, and we wanted to make sure that we'd get detailed input from each and every stakeholder. The input you've provided here will be very helpful to us. We'll certainly assure you that we'll give it full consideration as we move forward.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation. We had a presentation earlier today—and I see it here, Theodore Roosevelt's quote that the best thing we could do would be the right thing, the second best would be to do the wrong thing, but the worst thing would be to do nothing. Yet in your presentation you're suggesting you disagree with Theodore Roosevelt. I gather from your presentation that you think the answer in this case is that it would be better to do nothing.

If the government said, "Tell us the two most important things. What could we do to make passing the bill better than doing nothing at all? What part of it is really causing the problem?"—we had another representation earlier, and it was the 1.5% cap on it that would actually be the worst of all things, in the opinion of that presenter. What would it be in your opinion?

**Ms. MacDonald:** In our opinion, it would be the 1.4% benefit cap and the various benefit limitations and the restrictions on an arbitrator's ability to award what's fair. The big deal-breaker for us would be the benefit limitation, sections 12 and 15 of the proposed bill.

Going back to Theodore's quote, I did say that ideally we would prefer to do something and use Bill 206 as a basis for discussion. But if we were forced between Bill 206 and the status quo, we would pick the status quo.

**Mr. Hardeman:** Obviously, we've heard a lot of presentations on representation and how the boards are going to be structured. In your presentation, you suggested that representation on the board should be based more on proportional representation. Do you envision that because of the magnitude of the employer sector and the magnitude of the employee sector—would that not create an unmanageable structure to run the corporation, that if you had 1%, you get at least one representative? Theoretically, it's possible that if it evolved enough, you could have 200 people on the structure because each 1% would have a representative. Do you have any suggestions on how you would keep the structure manageable if you went the route of your suggestion?

**Ms. MacDonald:** If I can recall, in the member affiliation data that the OMERS board compiled and sent out to the various stakeholders in preparation for this meeting, there was only a handful of employee groups and unions that actually had 1%-plus representation. So what I would envision wouldn't necessarily be—well, there certainly wouldn't be 200 people, and I don't think that form of representation, if you had a 1% threshold, would be unruly. That's an example of how it could be done in a way that would be more suitable than what's proposed in Bill 206, even representation by population or having the employee groups and unions take turns appointing representatives among those groups that have 1%-plus of the membership.

**The Chair:** Thank you, Ms. MacDonald. We appreciate your being here today.

I'd like to thank all the witnesses, the members, the committee and ministry staff for their participation in the hearing.

The standing committee on general government now stands adjourned until 4 p.m. on Wednesday, November 23, 2005.

*The committee adjourned at 1811.*





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# Official Report of Debates (Hansard)

Wednesday 23 November 2005

# Journal des débats (Hansard)

Mercredi 23 novembre 2005

**Standing committee on  
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**Ontario Municipal Employees  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Wednesday 23 November 2005

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Mercredi 23 novembre 2005

*The committee met at 1600 in room 151.*ONTARIO MUNICIPAL EMPLOYEES  
RETIREMENT SYSTEM ACT, 2005LOI DE 2005  
SUR LE RÉGIME DE RETRAITE  
DES EMPLOYÉS MUNICIPAUX  
DE L'ONTARIO

Consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act /  
Projet de loi 206, Loi révisant la Loi sur le régime de  
retraite des employés municipaux de l'Ontario.

## POLICE ASSOCIATION OF ONTARIO

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. We're here today to continue public hearings on Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act. I'd like to welcome all witnesses, and tell you that you have 20 minutes for your presentations.

Welcome. It's the Police Association of Ontario, is that right?

**Mr. Bruce Miller:** That's correct.

**The Chair:** If you're all going to speak, if you could identify everybody at the table for Hansard. When you begin, you'll have 20 minutes. Should you leave time, there will be an opportunity for people to ask questions.

**Mr. Miller:** Thank you very much. With me today, to my left, is Lily Harmer, our associate with Paliare Roland, and to my right is Bob Baltin, the president of the Police Association of Ontario. My name is Bruce Miller, and I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line police officer in the great city of London for over 20 years prior to taking on my current responsibilities. I'd also like to acknowledge that we have in the gallery today representatives of the leadership of the Hamilton, Halton, Ontario Provincial Police, Peel, York, Toronto, London, Durham and Ottawa police associations. Members of the Ontario Professional Fire Fighters Association are also here in support today.

The Police Association of Ontario, or PAO, is a professional organization representing 30,000 police and civilian members from every municipal police asso-

ciation and the Ontario Provincial Police Association. We've included further information on our organization in our brief. We appreciate the opportunity to provide input into this important process.

Both the OMERS board and its shareholders agree that greater autonomy over pension benefits should be provided to all municipal employers and employees. Discussions have been ongoing since 1995 on how best to achieve greater autonomy within the OMERS plan. Despite best efforts over this period, these talks have failed to achieve results. Members of this Legislature are to be congratulated for considering this important issue.

The PAO believes that Bill 206 provides an excellent framework for OMERS autonomy. Within that framework, we believe that a number of amendments to the bill are necessary in order to protect the interests of police personnel across the province. We have listed the specific amendments in our brief, but would like to highlight those that we believe are crucial.

First and foremost, the PAO believes that the legislation must be amended by the standing committee to provide explicit provisions and protections for police and firefighters to bring forward for negotiation the following specified supplemental plan benefits at the local level: the ability to negotiate the combination of age/service factors to either 75 or 80 for police officers; the ability to negotiate the combination of age/service factors to either 80 or 85 for civilian members; the ability to negotiate the 2.33% pension accrual rate for police officers consistent with federal legislation; and finally, the ability to negotiate the best three-year final average earnings as the basis for calculating benefits.

We understand that municipal governments will argue differing capacities to provide these supplemental benefits. It should be noted that the establishment of these supplemental plans would not mandate these benefits at the local level. Instead, local employees and their employer can consider these benefits, taking into consideration local needs and local circumstances. It will be necessary to establish in legislation the right of police and firefighter associations to bring forward and negotiate these supplemental plan benefits.

We have worked closely with the Ontario Professional Fire Fighters Association on the matter of OMERS autonomy. Both organizations are united and will carry forward the same message to the Ontario Legislature. We would, however, like to focus our attention on the



importance of these legislative changes to the police community.

The vast majority of police personnel in Canada and North America have pension provisions that allow for police personnel to retire earlier than is allowed in Ontario. These plans are in place to ensure that there will always be an opportunity for those who have worked this very difficult profession to retire with dignity. High stress and shift work contribute substantially to the need for an early exit option. Plans such as these also ensure that police services are continuously rejuvenated with front-line personnel who possess the youth and physical ability to perform their required duties.

The demographics of policing are changing. Ten years ago, the average entry age for a new officer was 21. The Ontario Police College reports that the average entry age is now 29 years of age. This is coupled with the reality that the process of civilianization in police forces has forced older officers to remain on the front lines.

I think everyone realizes the challenges to community safety that police are dealing with across Ontario. Last week we released an Innovative Research Group poll that included some of the following findings:

—Over half of Ontarians expect that they or a family member will have property stolen as a result of a break-in in the next five years.

—More Ontario residents than a year and a half ago feel they or a family member will be physically attacked in the next five years, and that's up six points to 32%.

—An overwhelming majority, 80%, say that gun violence has worsened in the past five years.

—Finally, 80% of respondents agree that the role of police officers in society is distinct from other public servants.

These results demonstrate that members of the public believe that public safety is a priority issue. Increasing crime, inadequate funding for police services and a lax court and parole system are all cited as key factors in people's growing sense of unease in their community. Ontarians believe that police personnel are vitally important in the effort to keep Ontario's communities safe.

Currently, Ontario's municipal police personnel must obtain an 85 factor or 30 years of service for police, or a 90 factor for civilians, in order to retire on an unreduced pension. This differs substantially from other areas in Canada, as shown by the following examples: RCMP, 24 years; Alberta and Winnipeg, 25 years; British Columbia, 80 factor; Saskatchewan, 25 years of service or a 75 factor.

Improving pension benefits would help to retain experienced police personnel in today's highly competitive job market and at the same time would also help attract qualified personnel to the profession. The PAO believes that police associations should have the ability to negotiate these supplemental plans at the local level, with their employers tailoring those benefits to meet local needs.

Police and fire are unique employer and employee groups in the OMERS pool. Many pension arrangements

in the United States and Canada recognize the unique needs of emergency service personnel through segregated pension arrangements. Police and fire personnel are traditionally career positions with different pension and benefit requirements than other government and public service workers. The unique nature of these positions is recognized under Canada's income tax statutes that provide distinct retirement provisions for the two groups.

The federal government recently recognized the unique needs of police and fire by amending the federal Income Tax Act to allow police and fire to receive an increased accrual rate of up to 2.33% from the current 2%. We believe that Ontario should amend its legislation to reflect similar provisions.

Ontario's police pension plan benefits are based on the best five-year final average earnings. Other provinces such as Quebec and Saskatchewan have moved to a best three. We believe that Ontario's police and fire personnel should not continue to lag behind other jurisdictions and urge Ontario's legislators to amend the bill accordingly.

We would also like to comment on the merits of OMERS remaining as a defined benefit plan. We strongly support the legislation with regard to this issue in Bill 206. The PAO believes that section 9 should remain as is so that the statute is absolutely clear that every OMERS pension plan, whether primary or supplemental, must be a defined benefit plan. Studies have consistently shown that defined contribution plans result in significantly lower benefits than defined benefit plans, that members in defined contribution plans cannot retire due to low benefits, and that administration costs associated with defined contribution plans are much higher.

#### 1610

Finally, we'd like to raise the issue of solvency. Solvency provisions are in place to ensure that a pension plan has enough funds to pay off its liabilities within five years in the event of a plan windup. The PAO believes that this is an unnecessary provision for stable plans such as OMERS, as the possibility of a windup is highly unlikely. The PAO believes that Ontario's vibrant economy and performance will continue to set the stage for a stable OMERS plan. For this reason, we believe that solvency provisions are an unnecessary expenditure.

As you know, police association representatives from across the province met with you and your colleagues last week. Some members raised the issue of solvency in our discussions. To ease the concern related to these provisions, the PAO would recommend retaining solvency provisions for the main plan only and removing them from the supplemental plans.

I've given a very brief overview of our issues. I'd like to reinforce the need to amend Bill 206 to provide explicit provisions and protections for police and firefighters to bring forward for negotiation, upon proclamation, the specified supplemental plan benefits at the local level.

I'd just like to make a few comments that aren't included in the brief. I would like to comment on some of the submissions that have been made this week in regard



to huge cost estimates associated with some of these benefits. Frankly, we have no idea where these estimates came from.

We've costed out some of the benefits. I'd just like to draw your attention to one, which is an 80 factor within 10 years of retirement for NRA 60 members who are police members. The cost to the member and to the employer for that benefit would be \$364 for each side. In the scheme of things, it's certainly a relatively low item. I'd equate it to eyeglass plans. But when we hear the huge figures associated with these benefits that have been mentioned by some of the presenters, we just have no idea where they came from. Frankly, we feel it's misleading, because the figures are there for members to look at.

I also have to comment that we believe it's unfortunate that both AMO and the Ontario Association of Police Services Boards declined the opportunity to come to the table this summer when Minister Gerretsen called for meetings on this matter, because we believe that we could have reached some consensus on this issue.

As I said before, all of our specific recommendations are copied in this brief. I'd certainly like to thank the members of the standing committee for the opportunity to appear before you once again. I would be pleased to answer any questions that you may have.

**The Chair:** Thank you, Mr. Miller. You've left about two and a half minutes for each party to ask questions.

I would tell the people at the back of the room that we do have an overflow in committee room 1. So if you want to have a seat until your delegation, you have that opportunity. You'll be able to hear the hearings.

I'll begin with Mr. Dunlop. You have two and a half minutes.

**Mr. Garfield Dunlop (Simcoe North):** Thank you very much, Madam Chair. I've got a couple of minutes, so I just want to ask some quick questions.

To Mr. Miller: On page 10 of your submission, you actually have recommendations there. Are they the amendments you'd like to see put forward to amend the bill? Is that everything you want right there?

**Mr. Miller:** That's correct.

**Mr. Dunlop:** Has your legal counsel looked over those as well?

**Mr. Miller:** That's right. I should add that I believe they're consistent with the recommendations that the Ontario Professional Fire Fighters Association has put forward as well.

**Mr. Dunlop:** That was another question I had. So the OPFFA is supportive of those recommendations as well; that's what they'd prefer to see.

A question I also want to ask: In other jurisdictions—the RCMP, Alberta, Winnipeg, BC, Saskatchewan and other major centres and provinces across the country—are they all substantially less than what we are today—we're 30 or 85?

**Mr. Miller:** That's correct. Generally speaking, there are 24- or 25-years-and-out provisions. There are members who are retiring much earlier than we see in Ontario,

and that would be consistent through the United States as well. I think those jurisdictions have recognized the need for a constant influx of younger members into the profession.

**Mr. Dunlop:** Also on that, would the firefighters in those provinces be similar to these numbers?

**Mr. Miller:** I believe they are, but I'm not completely comfortable answering that. I've certainly done the research on the police side.

**Mr. Dunlop:** Very quickly, you mentioned earlier that in the last 10 years we've seen the age of someone entering the police service go up eight or nine years—I believe that's what you said. So we're saying that when these folks are getting closer to retirement, it will be even more important because they will be that much older; is that not the case?

**Mr. Miller:** That's correct. We're going to see a much older exit age than we're seeing now, probably by at least 10 years.

**Mr. Dunlop:** Is that because we're seeing more police officers taking more graduate studies—degrees and that?

**Mr. Miller:** For different reasons. I think the police services realize the value of education and life experience. But with an average entry age approaching 30, it's extremely important for community safety to be able to bring in younger officers.

**The Chair:** Ms. Horwath.

**Ms. Andrea Horwath (Hamilton East):** I just wanted to ask a couple of questions around where you see an issue with the language that allows for supplemental agreements to be negotiated, as opposed to what you want to see in terms of a firm description of the pieces that are to be enshrined in the legislation. Can you explain to me a little bit why the sponsors corporation may negotiate or put together supplemental plans, as opposed to what you were recommending—a little bit about what's behind that and why you think it's important to have that language in?

**Mr. Miller:** We think it may be something we may never be able to agree on, but other groups certainly have the opportunity to block these discussions. We weren't encouraged by the fact that some of the major employee groups wouldn't come to the table and discuss these issues, so we can't see that improving down the road. We just think it's vital to community safety that these issues move forward as quickly as possible.

**Ms. Horwath:** By describing particularly—I think on page 2—the ability to negotiate a combination of age, service factors etc.—by enshrining that kind of language in the legislation, do you feel you would have a better guarantee that you'll at least get it to the negotiating table with your individual employers?

**Mr. Miller:** It gives local associations and local employers a chance to tailor their specific needs to their communities. We think that at the end of the day it's a win-win situation in terms of community safety.

**Ms. Horwath:** I don't disagree with the principle of having the ability to negotiate supplemental agreements. I support that completely, and the NDP supports that



completely. I'm just trying to figure out how important it is to have that language prescribed as opposed to just having it as—

**Mr. Miller:** We believe it's absolutely crucial to the success of the bill. As you know, the sponsors corporation may not meet for three years. This could be a lengthy process.

**Ms. Horwath:** That's a very good point.

Do I still have time?

**The Chair:** About 10 seconds.

**Ms. Horwath:** What about ambulance workers? What's your position on that, in terms of some of the other things you've brought forward? You say you're in line with firefighters.

**Mr. Miller:** We haven't had any specific discussions with the paramedics at this point, so it's difficult for us to comment on that.

**Ms. Horwath:** OK.

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**The Chair:** Mr. Duguid.

**Mr. Brad Duguid (Scarborough Centre):** I have three questions; I doubt I'll get to them all. The first is on some of what I think you termed over-exaggerated cost estimates that have been brought before us by some of the municipalities. I believe, in our analysis of their numbers, that they're assuming 100% take-up of these benefits. Do you think that's realistic, from your perspective as employees?

**Mr. Miller:** It's completely unrealistic. Our members are taxpayers, to start with, and have concerns in that area. Our members are also paying for half of these benefits. I think, when we make suggestions for change on the factors and on the 2.33%, those are very similar benefits. The whole principle is early retirement, so we wouldn't see a situation where associations or employers would see any need for all those benefits. It's important to have the range as well—the 75 factor and the 80 factor—because there are different cost levels. But as I mentioned, the cost on the 80 factor works out, I think, to \$364. When I hear figures such as \$380 million—and you've heard them here as well—I have no idea where those figures come from, and it's unfortunate that we couldn't sit and discuss these this summer.

**Mr. Duguid:** How critical is solvency relief to making these costs a little more affordable?

**Mr. Miller:** I think it's critical in terms of the supplemental plans, because it is a unique situation. If I could just look at the 80 factor again: With solvency, we're looking at roughly \$1,500 for each side; without solvency, we're looking at a very affordable \$364.

**Mr. Duguid:** Third, quickly, the question was asked and you skirted around it a little bit: Do you have any objections to EMS workers also being included in these kinds of benefits?

**Mr. Miller:** We have no objections at all. It's just unfortunate that we didn't have an opportunity to discuss the matter with them, so I'm somewhat reluctant to comment for them.

**Mr. Duguid:** That's fine. Thank you.

**The Chair:** Thank you very much for your delegation. We appreciate your being here today.

While our next delegate is getting settled, we have two additional documents based on questions that were asked at previous hearings: solvency funding requirement and governance model. Those are the two handouts.

**Mr. Ernie Hardeman (Oxford):** While the delegation is getting prepared, I just wanted to put forward a motion that would deal with extending the time for these hearings.

The Chair will be aware that the subcommittee agreed to four days of hearings and then do clause-by-clause and refer the bill back for second reading. At that time, of course, there was no indication of how many people would want to be heard. Obviously the number of people who have come forward has been considerably higher than anyone thought it was going to be.

The minister, in introducing the bill, suggested that it was kind of a compromise—that the negotiations had taken place and the public consultation had taken place—but he wanted to hear from all the people prior to introducing the bill for second reading so the appropriate changes could be made.

I find it hard to accept, then, that such a large portion of the people who wanted to be heard and had something to say to the bill will not be heard. I haven't actually counted the numbers, but I think we're likely going to hear considerably less than 20% of the people who actually put their names forward.

Madam Chair, you received a letter from one member of the Legislature who had a concern expressed on behalf of his community that no one north of Highway 7 in the province had been asked to present to this committee. Under this structure, the opinions of everyone north of Highway 7 would not be considered necessary for an appropriate hearing on this bill.

I would like to move a motion that we pass in this committee that we extend the hearings. The minister, recognizing that this bill is not allocated to be reported back to the House at a certain time, said he was prepared to hear all that was to be heard on the bill so he could get the best possible piece of legislation he could before the House. So I would like to move a motion:

I move that these hearings be extended for the period of time it takes to hear as many of the people who requested to be heard as possible.

The reason for this, of course, is that the member for Northumberland mentioned that this was in the Liberal platform: “‘The bill was introduced in June, no one can say they were caught by surprise,’ explains Lou Rinaldi, Northumberland member of provincial Parliament. ‘To say people got blindsided by this is not right. People were told this was one of the things we would bring forward if we were elected.’”

I haven't been able to find it in the red book, so I wondered, in this time while we're having more hearings, if the member could find that information for me, so I could tell my community how they should have been aware of this bill that was coming forward.



**Mr. Duguid:** Madam Chair—

**The Chair:** Mr. Duguid, in the interest of showing respect for the witnesses we've had today, I think we should debate this at the close of all the witnesses being here. You could debate it now, but people have spent lots of hours preparing to be here today and I think, with respect, we should debate this at the end of the meeting.

**Mr. Duguid:** I think the government side is in full agreement with that.

**The Chair:** I would be happy to put you first on the list when we get to that point in the debate.

Mr. Hardeman, would you be able to give the clerk the copy of the motion so members can look at it before we get to that point where we talk about it? Thank you.

#### WESTERN ONTARIO WARDENS' CAUCUS

#### EASTERN ONTARIO WARDENS' CAUCUS

**The Chair:** Our next delegation is the Eastern Ontario Wardens' Caucus and the Western Ontario Wardens' Caucus. I believe all of the people are different from what's on the list.

Welcome. Thank you for being here. If you could identify yourselves—we have the two packages. Are you going to be speaking separately?

**Interjection:** Yes

**The Chair:** So whoever is going to speak first, could you identify yourself—and then the next group—for Hansard. When you begin, you'll have 20 minutes total.

**Mr. Bill Rayburn:** Madam Chairman and members of the committee, thank you for the opportunity to speak with you today. My name is Bill Rayburn, and I am the CAO of Middlesex county and a past chair of the OMERS board. I am here today representing the Western Ontario Wardens' Caucus, along with the warden of Middlesex county, Tom McLaughlin. Also accompanying me today is Mr. Charles Mullett, warden of Hastings county and mayor of the town of Bancroft, and Mr. Jim Pine, CAO of Hastings County. At the conclusion of my remarks, Mr. Mullett will make a presentation on behalf of the Eastern Ontario Wardens' Caucus.

Collectively, the wardens of Ontario represent millions of taxpayers across Ontario. It is with the interests of these taxpayers in mind that we approach you today with our concerns with Bill 206. Our time is short, so let me start with our most serious concern: the cost of Bill 206 to our taxpayers. To be frank, the property taxpayers we represent cannot bear the financial burdens this bill will impose upon them.

AMO has estimated that Bill 206 will increase the cost to Ontario taxpayers by \$380 million. I know from previous questions from the committee and from other presenters that there is some concern that these numbers have been exaggerated. Unfortunately, this \$380-million figure is just the most obvious of increases. We have not included any estimates in regard to additional administration costs for each municipality. We have not

included any additional costs that the plan will have to cover to offer supplementals. We have also not added the costs of transition to a sponsors committee or the ongoing costs of supporting a sponsors committee that is estimated to be in the millions. So, if anything, our costs are underestimated.

It should be no surprise to any member of the standing committee that as property taxpayers learn about new costs, they are becoming increasingly vocal about how much more they can afford to pay. We hear it week in and week out at our council meetings.

One thing we can all agree on is that this bill will cost more than a dollar. I can assure you that any cost to taxpayers, whether it be \$380 million or \$1, for implementing a bill that municipalities and their taxpayers do not want is too high a price to pay. The fact that the cost of this bill comes with no additional service to our residents is even more disappointing. When we consider both the obvious and the hidden costs associated with Bill 206, the first question we ask ourselves is, why is this bill necessary?

Municipalities have heard and rejected the province's standard answers to this primary question. Let's review the standard answers from the province. We often hear that the province is simply providing OMERS with what other pension plans have. This answer, quite frankly, is clearly misleading, as the province knows full well that OMERS is different from other major plans in Ontario, as it is a multi-employer, multi-stakeholder plan. For this reason, cookie-cutter solutions to governance and administration cannot be applied to the OMERS example.

For example, the simple majority vote that is satisfactory for other non multi-employer plans does not set a high enough mark for OMERS. As AMO has pointed out, the model should be unanimous agreement to implement a fundamental change to the plan. We support AMO's view. The standard must be higher.

We have also heard from provincial representatives that they trust in municipalities' ability to bargain. While we appreciate this vote of confidence, municipalities clearly see that this bill is stacked against their ability to freely negotiate. All municipalities in Ontario have experience with the mediation/arbitration process, and the province is well aware of the profound impacts that allowing this process to guide the provision of supplemental benefits will have on our labour costs.

The mechanism for resolving disputes, namely binding arbitration, is a significant flaw in the bill. Putting the governance of such an important plan in the hands of arbitrators is wrong. Their decisions will have a direct effect on our property taxpayers, because experience shows us that arbitrated decisions quickly find their way into collective agreements.

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The province has also told us that the bill is simply about governance of the plan. If this bill is simply about governance, why has Bill 206 provided for the provision of certain supplemental benefits? Why is the province mandating what is clearly the role of the sponsors to decide?



The answers that we have received from the province to our questions lead us to believe that the municipal taxpayers of Ontario have been put in the backseat for this piece of legislation. Clearly, municipalities in Ontario are not asking for supplemental plans to be included in any OMERS initiative. Therefore, the only reasonable conclusion is that the province has included supplementals for their benefit or the benefit of employee organizations. Perhaps they are providing supplementals for the benefit of both the province and employee organizations. One thing is for sure, the province is not considering the interests of taxpayers with this legislation.

In fact, I'm not sure that the province is even considering the best interests of the plan members with this bill. One of the primary goals of OMERS in recent years has been to increase the portability of the pension plan between provinces and municipal jurisdictions. Has the province even considered what the impact of supplemental benefits will be on portability? I can assure you the implications are negative.

Finally, considering the impact of this legislation, we are very concerned with the manner in which the legislation is proceeding. The timetable and the manner in which this legislation is being brought forward is, to the best of my knowledge, unprecedented.

As you know, the OMERS pension plan is rapidly approaching \$40 billion. This pension plan has served Ontario's municipalities and their employees well for over 40 years. The government's rush to judgment on the future of this important plan is very concerning. Of concern are the limited hearing dates for the standing committee. I sincerely hope that the province takes the opportunity to hear from more of Ontario's municipalities in the second reading of the bill.

Our recommendations are as follows:

(1) Send the bill back for further analysis of the potential costs and financial implications for employers and employees and further consultation with the stakeholders.

(2) Hold further hearings at second reading.

(3) Eliminate the requirement for the sponsors corporation to consider enhancing pension benefits for employees in the police and fire sectors.

(4) Eliminate the requirement that the sponsors corporation cannot consider defined contribution pension plans.

(5) Key decisions, such as significant plan design changes, should require unanimous agreement or at least a super-majority vote of the sponsors corporation.

(6) Eliminate or modify the proposed dispute resolution mechanism for significant changes to the design of the plan or creation of any supplemental plans.

(7) Provide start-up funding and support for the sponsors corporation through the transition period.

Thank you very much and I'll turn it over to Warden Mullett.

**The Chair:** Just so you know, you have 13 minutes. So you're doing fine.

**Mr. Charles Mullett:** Madam Chair and members of the committee, thank you for the opportunity to speak with you today. My name is Charles Mullett, warden of Hastings county and mayor of the town of Bancroft. I'm here today representing the chair of the Eastern Ontario Wardens' Caucus, Mr. Robert Sweet, warden of Renfrew county. With me is our CEO for the county of Hastings, Mr. Jim Pine.

Our time is short so let me be direct. The Eastern Ontario Wardens' Caucus has reviewed Bill 206 and we are concerned—very concerned. We do not support this bill in its current form, and let me tell you why.

First and foremost, the nearly one million property taxpayers we represent cannot bear the financial burdens this bill will impose on them. It should be no surprise to any member of the standing committee that our property taxpayers are increasingly voicing their concerns about how much more they can pay to support local services. We hear it week in and week out at our council meetings.

Our taxpayers understand that their contributions fund services like roads and bridges, garbage collection and recreational programs. They may understand less the significant amount of property taxes that are paid toward social services, ambulance and disability programs, but that is a topic for another day.

What I and my fellow wardens understand is that our taxpayers expect something in return for their taxes. They expect that when the tax bill arrives at their door and they open that envelope, there will be at least a connection to municipal services delivered by the municipality.

They will not be pleased to learn that the new costs associated with enhancing municipal employee pension plans will bring absolutely no benefit to them. There will be no additional affordable housing units constructed, no additional ambulances purchased, no more fire trucks added to the fleets and certainly no more roads repaired as a result of paying the higher pension premiums.

In short, property taxpayers will simply pay more. They will not be happy. In fact, we are already hearing on the street and in coffee shops their concerns as they become aware of this bill.

Our caucus has examined the costs of the possible supplemental pension plans identified by OMERS, and the costs are significant. Across the east, our members, the upper-tier governments, estimate that nearly \$11 million per year may have to go toward pension premiums. We understand that in the city of Ottawa their calculations indicate additional premium charges of over \$20 million annually.

The Eastern Ontario Wardens' Caucus had good reason to question the logic and the potentially huge new taxpayer burden this bill will create.

As some of you may know, the EOWC has spent considerable effort over the past four years documenting the many financial challenges we face in our part of the province. Let me mention just a few of the systemic problems:

In Eastern Ontario, it is the homeowner who bears the largest tax burden, at 94.7%. I repeat, 94.7% of all local



assessment is residential. Commercial assessment accounts for 4.9% of total assessment, while industrial counts for only 1.4%. When you superimpose the fact that family incomes across our region are on average 13% lower than in other parts of Ontario, you can quickly understand why we hear in our council chambers the people's concerns about increasing taxes. The assessment situation will continue to be a real concern for us. The trend is downwards rather than up for new, real growth. In 2003-04, it was less than 2%; in 2005, it was 1.3%.

The taxpayers are reaching their breaking point. Total county levies for our EOWC members has grown by 25% in the past three years, from \$185 million to \$235 million. Is there any wonder why we are concerned with new potential costs to the taxpayers in our communities?

As counties, we are extremely vulnerable to changes in programs like land ambulance, where the increasing costs of wages and equipment is not being matched by funding from the province. Almost all of the 13 members of the EOWC now finance 70% of the costs and the province has retreated to paying 30%, rather than the agreed upon 50-50 sharing. How can we justify or, more importantly, how can you justify, the new tax burden Bill 206 will impose on our ratepayers? Make no mistake that the bill as currently drafted will lead to new costs for pensions benefits.

If we've learned one thing over the last eight years, it's that the cost of radical change has been significant. We are still paying dearly for the downloading of social services, social housing and ambulance services on to the property tax bill.

According to AMO, these potential new supplemental plans mean a further hit of some \$380 million annually to the property taxpayer. One thing is clear: This money will not be used to fund existing services or repair our crumbling infrastructure.

We know from recent studies that there is an annual \$1.2-billion investment gap in water and sewer systems across Ontario. When you add the 9% premium increase for all municipalities next year, which means \$66 million, and the annual estimate for the cost of the new supplemental plans, which is \$380 million, that is approaching half a billion dollars that will be unavailable for these key services.

Beyond the financial crisis this bill will cause, the Eastern Ontario Wardens' Caucus asks, why are we here in the first place? Who asked for these changes? We certainly did not. Is it because of perceived recruitment problems? We don't think so, because none of us are having any problem recruiting new staff because of a bad pension plan. We have not had one potential employee tell us that they were not going to sign on with any of our counties because of a poor pension plan. Clearly, something else is at play.

In speaking directly to the bill as it is drafted, the EOWC has real concerns about the decision-making process written into it. The simple majority vote does not set a high enough mark. As AMO has pointed out, the model should be unanimous agreement to implement a

fundamental change in the plan. We support AMO's view. The standard must be higher.

The mechanism for resolving disputes, namely binding arbitration, is a significant flaw in the bill. Putting the governance of such an important plan in the hands of arbitrators is wrong. Their decisions will have a direct effect on our property taxpayers, because experience shows us that arbitrated decisions quickly find their way into collective agreements.

As I stated at the beginning, the Eastern Ontario Wardens' Caucus does not support this bill as it is currently drafted. If the government insists on pushing it through the Legislature, significant changes must be made to it. More specifically, we recommend the changes in appendix A, which is attached. They focus on the governance and arbitration components of the bill.

Let me end with a short illustration of the financial impact on my county. First, we already know that our regular annual OMERS premium is going up to \$125,000 in 2006. To some of you, \$125,000 might not sound like much money, but for Hastings county, it represents a 1.25% tax increase. Second, we have costed all of the 10 supplemental plans identified by OMERS that would be possible as a result of Bill 206. Those costs range from \$95,000 to \$1,054,000 annually and would have to be added to the county budget. That translates into \$17 per household at the top end. When you add in my town's cost of \$23.30, our taxpayers will be taking a hit of \$41.30 per household. That is unacceptable, especially when there is no return through improved municipal services.

1640

All of the 13 members of the Eastern Ontario Wardens' Caucus face a similar scenario of rising property taxes to pay premiums for supplemental plans. We ask you to consider our situation and our concerns in your deliberations. We ask you to step back from the breach and rethink this matter. Our taxpayers cannot bear the cost that your government's bill would generate. I thank you for the time.

**The Chair:** We've got about a minute and a half left for each party. Ms. Horwath.

**Ms. Horwath:** I wanted to ask a question around pensions, particularly the concept that pensions are workers' deferred wages. Would you agree with that concept generally, that pensions are workers' deferred wages?

**Mr. Rayburn:** Yes.

**Ms. Horwath:** The reason I'm asking, and I've asked other presenters about this issue, is that when you're at the negotiating table with your various bargaining units, oftentimes when these issues come up, the employee groups or the unions are not necessarily asking for increases in everything. Often there are trade-offs, even in the bargaining position. They won't ask for as much of an increase in wages because they're going to take some of that perhaps in an increase to their pension plan instead. I'm thinking particularly about supplementals at this point.



I guess I'm trying to figure out if you see any of that in the future, if this bill is to go forward—allowing for supplementals. Would there be any give and take in, for example, police or fire, which we heard from earlier, or even CUPE, which we heard from earlier, in terms of their concerns with some of the caps that currently exist? Do you see an opportunity for negotiations of these kinds of things at the table, which would reduce pressure on wages because there would be resources being asked for in other areas?

**The Chair:** You have about 20 seconds to answer that.

**Mr. Rayburn:** All right. I'll be quick. Yes, I think that is an option. The problem with this bill, though, is not that it asks people to negotiate around a table, it's how it asks people to negotiate around a table. Employers will be walking to that table with handcuffs on and with the field slanted directly toward employees in this type of negotiation. Mediation-arbitration—all those types of rules around how the negotiations would take place—is not the appropriate bargaining table to negotiate the things you've described.

**Ms. Horwath:** Just for clarification, though, it seems to me that the arbitration issue in the bill is around when the sponsors corporation can't come to an agreement on what the supplemental plan will look like—

**The Chair:** Hopefully, someone else will ask that question for you. Mr. Rinaldi.

**Mr. Lou Rinaldi (Northumberland):** Thank you for being here, both Your Worships and staff. I know we have very little time, and I thank you for allowing me and a couple of members the opportunity to meet with you folks in Hastings county a couple of weeks ago to give us a little bit of a heads-up.

In light of the very short time, I wonder if you could give me some idea—we've heard a lot of numbers. You were here for a bit and you heard from one end to the other. Specifically for police and fire, being in many cases a lower-tier responsibility, can you give me some idea where you get the upper-tier cost when you talk about supplemental plans for police and fire? Can you give me something, maybe for Hastings county or for the whole of eastern Ontario?

**Mr. Jim Pine:** If I may, our costs are directly calculated by the employee base that we have currently—paramedics, people who do work in the social services. We haven't costed for Hastings county any policing costs. Those costs, if they're built into OPP contracts, for instance, are going to come at the local level because policing is a local issue. There will be new costs at the local level. Ultimately, there's only one taxpayer. It's the same pocket that the tax dollar comes out of, so whether it's an upper-tier or a lower-tier cost, they're still going to have to pay for it.

**Mr. Rinaldi:** Do I have any more time left, Madam Chair?

**The Chair:** Thirteen seconds.

**Mr. Rinaldi:** Thank you very much.

**The Chair:** Mr. Hardeman, are you the speaker?

**Mr. Hardeman:** Thank you very much for the rather rushed presentation. Obviously, if you work hard, you get twice as much done in the same length of time as we normally intended.

The comment I wanted to make was on the issue about the decreased portability of pensions. That's one of the things we've heard everywhere, including where we're sitting. If you're employed somewhere else prior to being here, how do you keep your pension benefits up to date so that when you're entitled to them, they would pay out? The portability of it—if you could just comment on that, I'd like to hear a little more about that.

**Mr. Rayburn:** Mr. Hardeman, as you know, for many years I was chairman of the appeals committee for OMERS. One of the most difficult situations to deal with is straightening it out when employees transfer from another province or from another plan into OMERS. Whenever you add layer upon layer of different options to that, it only increases the complexity. In many cases, it discourages employees from travelling to a new jurisdiction like Ontario, where the plans are so different from other jurisdictions. So that's interprovincially, within the country.

I would also mention that, intermunicipally, if you get to the point—someone mentioned the point that there may not be take-up of all 10 across each municipality in Ontario. To me, if it isn't across all of Ontario, that's even more troubling, because people are going to want to stay in the municipality where that benefit is. If you transfer to another municipality where that benefit isn't, how is that administration going to happen? These are questions I have, because the costs associated with administering hip-hop across the 400-some municipalities of Ontario, all with different supplemental plans—I have no clue how this committee thinks that is going to happen at a low cost. It will be very expensive indeed.

**The Chair:** Thank you, gentlemen, for your delegation. I appreciate your being here today.

#### CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79

**The Chair:** Our next delegation is the Canadian Union of Public Employees, Local 79. Welcome. I believe we're getting a handout now. Are you both going to be speaking today?

**Ms. Ann Dembinski:** I'll primarily do the speaking.

**The Chair:** OK. If you both speak, before you speak, if you could identify yourselves. When you begin, you'll have 20 minutes.

**Ms. Dembinski:** Good afternoon. My name is Ann Dembinski, and I'm the president of CUPE Local 79. With me today is Tim Maguire, the second vice-president and chief steward of CUPE Local 79. On behalf of the executive and the members of Local 79, I wish to thank you for the opportunity to express our views on the proposed legislation referred to as Bill 206.



First off, I just wanted to tell you who we are. CUPE Local 79 is the largest municipal local in Canada. Our numbers vary anywhere from 18,000 upward. We represent the full-time and part-time members of the city of Toronto, Bridgepoint Hospital and the Toronto Community Housing Corp. Some of the areas we work in are public health, homes for the aged, social services, parks and recreation, housing and court services. We are child care workers, ambulance dispatchers, nurses, city planners, hospital workers, building inspectors, shelter and hostel staff, public health nurses, water and sewage treatment employees and cleaners who work in numerous locations across Toronto, including police stations. We ensure that you'll always have clean water, that a restaurant meal won't make you sick and that the building you occupy is safe. We work to provide shelter for those without homes. We are the individuals who together make Toronto a city that works.

Why are we here? We're here to go on record in support of the transfer/devolution of the governance of the Ontario Municipal Employees Retirement System, OMERS, to those who pay into and benefit from the plan. As the largest municipal local in Canada, we have a vested interest in making sure that the government gets it right. This is about democracy. We wanted the plan devolved to make sure that we could make improvements to the plan on behalf of our members.

As we all know, the proposed legislation will significantly alter the governance structure of OMERS. If passed, OMERS will be governed by a sponsors corporation with representatives from employee and employer groups. The investments will be managed by an administration corporation.

**1650**

CUPE Local 79 has a responsibility to all our members to ensure that they are treated fairly and equitably with respect to the plan. That will not occur unless Bill 206 is amended.

What are our concerns? We're very concerned about a number of aspects of the proposed legislation. Bill 206 would create a new sponsors corporation that would have limited power to make benefits and contribution changes and would meet infrequently. The administration corporation proposed under the bill would not be accountable to sponsors, and we have a real problem with that.

CUPE Local 79 wants a structure that will give our representatives a meaningful say over how our retirement savings are managed. The two corporations must be governed in a democratic way. Membership must be based on the principle of representation by population. The proposed structure of the sponsors corporation under Bill 206 means that CUPE will be grossly under-represented. This must be corrected. CUPE is the largest contributor to the OMERS pension plan, with more than 102,000 members. CUPE represents more than 45% of the plan contributors. We are also 45% of the beneficiaries, and the proportion of retirees is likely to be 45% former CUPE members.

We are very unhappy that the proposed legislation will prevent members' representatives from improving

pensions. OMERS pensions compare poorly with other plans. A gap exists between OMERS and other major public sector plans and these proposals will prevent that gap from being closed.

The bill allows for amendments, but not significant ones. For example, it will allow a better accrual rate but only up to 1.4% versus the current 1.325%, when the allowable maximum is 2% under pension law. The government, while claiming to give OMERS autonomy from government, is limiting pension levels by special legislation rather than allowing OMERS to be regulated only by pension law.

This bill is unfair in many ways. The capping of pensions is unfair and will create inequities. There is serious, systemic gender discrimination inherent in this proposed legislation. Most of our members are women. Many of them have difficult, stressful jobs. Some of our members also have dangerous jobs. Many of our members work in the emergency services field. We represent workers at hospitals and home workers who have to deal with SARS epidemics and legionnaires' disease. We represent workers who consult and assist people with infectious diseases. Many of our members work with people in crisis and with the poor and the ill. The cap would apply to all these workers. It would not apply to the male-dominated occupations—police officers and firefighters. Bill 206 allows the maximum accrual rate for police officers and firefighters. Bill 206 does not allow the accrual rate for other jobs to be regulated by pension law, but instead imposes a cap of 1.4%.

We have a real problem with this. We support early retirement for police officers and firefighters. We support their right to negotiate good pensions. We do not, however, support one set of rules for the guys in uniform and another for women in nursing and other uniforms. It is blatant discrimination to limit these rights to the male-dominated occupations. If the cap is legislated, the gender gap will continue to grow over time, to the detriment of women.

It is no secret that women continue to earn lower wages than men. In Canadian society, the poorest people are elderly women. This proposed legislation will contribute to that. The government is trying to limit the pensions that our members, mostly women, can receive and it's the wrong way to go. We want the cap removed and we want equality with other employee groups when it comes to every aspect of the plan.

We are not asking you to build in special protections for women. We are asking for fairness and equality for everyone. Our members should be able to contribute at the same rate as their brothers in the male-dominated occupations.

We can't fix all of society's problems when it comes to wage disparities and other equity issues. This, however, is one area the government can fix. If it's not fixed, if the cap is not removed, you are letting down the women of this province. You're also letting down all the people—men and women—who believe in equality.



CUPE Local 79 also supports the city of Toronto's position that they be represented on the sponsors corporation. The city of Toronto is the largest municipal employer in Canada and the largest employer group in OMERS. Under the new governance structure proposed in Bill 206, the city of Toronto does not have a significant voice in the sponsors corporation, the administration corporation and the advisory committees to the sponsors corporation. To ensure appropriate representation in the pension plan for employees of the city of Toronto, this must be addressed in the proposed legislation.

We do not agree that improvements to the plan should be postponed, however. We need improvements now. We have waited long enough. OMERS is an inferior plan. It's time to stop the inequities.

To sum up, here is what we are asking for: The new sponsors corporation and the administration corporation must be governed in a democratic way. Membership must be based on the principle of representation by population. CUPE must be appropriately represented to reflect the large proportion of CUPE members in the OMERS pension plan. Bill 206 should include assurances that the sponsors corporation and the administration corporation be required to consist of an equal representation of employees and employers. The structure of the sponsors corporation and the administration corporation should at all times include two members chosen by the city of Toronto, and the advisory committees to the sponsors corporation should at all times include at least one member chosen by the city of Toronto. This is vital and must be clearly articulated in the proposed legislation. CUPE Local 79 considers it fundamental that the city of Toronto has significant representation in the OMERS governance structure.

Section 12 of the proposed bill freezes OMERS benefits at a rate well below public sector standards. Bill 206 should be a real autonomy bill and this section should be removed.

CUPE Local 79 has a responsibility to ensure that this plan will function properly and do what it was designed to do—provide financial stability by ensuring vital pension dollars are there for all our members when they retire.

CUPE Local 79 insists that the caps be removed on pensions and that any future surpluses be used to improve pensions for retirees. CUPE Local 79 is asking that our members have the best three final average years' earnings as a basis for calculating their benefits.

How do we achieve what we want? Significant amendments which would address our concerns need to be made to the bill before the proposed legislation goes forward to the next stage. These changes must be made to ensure that the people who pay into the plan are represented appropriately in the sponsors corporation and the administration corporation. Membership must be based on the principle of representation by population. Joint trusteeship means that we must have a meaningful say, along with our employers, in running our pension

plan. The new administration corporation must be accountable to the new sponsors corporation. Pensions must be protected to guarantee the best possible outcome for retirees. The proposed legislation must allow for significant pension improvements. The caps on pensions must be removed. Future surpluses must be used to improve pensions.

This committee, especially government members, must really listen to the people who will be notably affected by the proposed legislation—the workers who will receive the pensions. Amend the legislation to ensure that the workers, who are contributors to the plan, will always have meaningful input and that their financial interests will always be protected appropriately. This, and only this, will guarantee that the people for whom the plan was developed will truly benefit.

Thank you for your time.

1700

**The Chair:** Thank you. You've left about two minutes for each party to ask questions, beginning with Ms. Matthews.

**Ms. Deborah Matthews (London North Centre):** Thank you very much for your presentation. The issue of gender inequality is an issue that I haven't heard raised yet, so I want to pursue that one a little bit. I wonder if you can tell me how we could address that and which of your recommendations address that particular problem.

**Ms. Dembinski:** I would suggest that we be allowed the same as fire and police, that the 1.4% be amended to coincide with what the federal legislation says.

**Ms. Matthews:** So that all members receive the same consideration?

**Ms. Dembinski:** Yes.

**Ms. Matthews:** OK. Thank you very much.

**Ms. Dembinski:** And I will say that we support the rights of the police association and firefighters. We support them, but we also want that.

**Mr. Duguid:** I just want to thank the deputants—Ann I've known for many years; it's good to see you again—for being here.

**Ms. Dembinski:** You too.

**Mr. Duguid:** As you're probably aware, this is first reading and one of the reasons for that is to get input such as some of the input you've provided. I just want to assure you we'll be taking your recommendations very seriously. I don't know if they will all be included in amendments, but certainly we'll seriously be looking at them. You've made some good suggestions. Thank you.

**Mr. Tim Hudak (Erie—Lincoln):** Thank you, CUPE 79, for the presentation. Sid Ryan was with us last week and Mr. Ryan made a very passionate presentation. He actually spoke against the bill quite strongly and said that he would rather see this bill not pass unless substantially amended. Would you agree with Mr. Ryan's presentation?

**Ms. Dembinski:** Was I here?

**Mr. Hudak:** Would you agree?

**Ms. Dembinski:** I think amendments need to be made. I don't want to comment on what Sid said. I'm here on



behalf of Local 79 members. Our members certainly can support this if in fact amendments are made, such as allowing a level playing field for everyone.

**Mr. Hudak:** Right. Is that a deal-breaker if the cap is not taken off, as you suggest it should be? Would you say that the bill should then be voted down if they don't change the bill?

**Ms. Dembinski:** I think it needs to go back and have those amendments. I don't think you can have one set of rules for one group and another for others.

**Mr. Hudak:** My colleague Mr. Hardeman just brought forward a motion that we'll get to after the deputations. It's calling for more time for hearings. In fact, there were probably only 20% of those who wanted to come before this committee to talk about the bill, and every day we're getting more and more letters to this committee. Would you suggest the committee should extend the hearings so we can hear from more groups?

**Ms. Dembinski:** I'm not certain. I haven't been here to hear what the other individuals have said. You're hearing from the largest contributors of the plan, and I think you need to seriously listen to the largest contributors. I've looked at some of the deputations and certainly there seems to be merit to what's being said. I'm not certain if extending it is what I see.

I think the changes to our pension plan are long overdue. As I've said, our members can't wait. Many of them are elderly women who have recently joined the workforce. They don't have a great pension to begin with and by deferring it any longer, you're disadvantaging them even more.

**Ms. Horwath:** I wanted to talk about the 1.4% cap that's on there now. Where do you think the government came up with the idea that this was an appropriate way to treat a huge group of workers, particularly women workers? Where do you think this comes from?

**Ms. Dembinski:** I really have no idea who thought of this and what the rationale is behind this. I'll just say that you only have to come in and walk around the workplaces that our members work in to see many of our members are women; they're visible minorities. Again, I can only say the 1.4% is wrong. It needs to be removed. There has to be a level playing field for everyone.

**Ms. Horwath:** Did you do any numbers to illustrate what kind of financial impact the removal of that cap would have on workers? Sid raised it as well and you're following up in a very illustrative way, and I appreciate that. I know there are figures in his presentation, so I'm sure we could find them in Hansard. It's several hundred dollars a month in terms of the standard of living of people who are able to obtain the 2%, as in the federal Income Tax Act, as opposed to the 1.4% that it's capped at in this particular bill.

It seems to me that when we look at who is poor in our community, many of those people, as you say, are retirees. If we can find a way to attack poverty in all these other ways, then we'll have far fewer people living in poverty at the end of the day.

**The Chair:** You have 15 seconds left.

**Ms. Horwath:** I'll just say thank you very much for your presentation. I know there's a motion on the floor that's coming. I haven't decided quite how I'm going to deal with it, but I agree with you that the largest interests have been at the table. Most of the people who are speaking are saying similar things. Yours was a unique insight into the issue of the cap, and I appreciate that. Thank you.

**The Chair:** Thank you very much for your delegation.

**Mr. Duguid:** Given Mr. Hudak's success with his last question, I'm tempted to give him more time but I think I'll restrain myself.

**The Chair:** Thank you very much. We appreciate you being here today.

## ONTARIO MUNICIPAL ADMINISTRATORS' ASSOCIATION

**The Chair:** Our next delegation is the Ontario Municipal Administrators' Association. Welcome, gentlemen. If you're both speaking, could you, before you speak, identify yourselves for Hansard? After you've had a chance to introduce yourself, I'll be timing you. You have 20 minutes. If you leave time, there will be an opportunity for us to ask questions. Whenever you're ready, begin.

**Mr. Mike Trojan:** Thank you. I'll be speaking on behalf of the group. My name is Mike Trojan. I'm on the board of directors of the Ontario Municipal Administrators' Association. With me is Nigel Bellchamber and he is the general manager of the association. We want to thank you for giving us the opportunity to appear before the committee today.

Just a little bit about the Ontario Municipal Administrators' Association: We were founded in 1958 and our mission is "to promote professional municipal management." We represent about 175 of the largest municipalities across Ontario through our membership.

Our members provide professional municipal management in a couple of ways. One is that we are responsible as administrators for the day-to-day activities within our municipalities. We're also senior advisers to our councils on matters that affect servicing and on matters that affect the cost of services delivered to the inhabitants of our municipalities. It's in that latter advisory role that we're here to speak to you today on Bill 206.

I think you've already heard from some of the councils directly—and you've received an awful lot of written submissions—that the belief is that devolution as proposed in Bill 206 does not provide any additional benefit to taxpayers; all it does is increase costs. In fact, estimates provided by the municipal sector indicate that changes could result in new costs—and I know you've heard a couple of different figures—in excess of \$360 million a year. We don't believe that's a worst-case scenario. I think you heard earlier today that it doesn't necessarily include all the costs that might materialize as a result.

We're a little bit surprised and disappointed that there has been no attempt to project the impact of this bill in



terms of its costs prior to its introduction. As advisers to our councils, when changes to programs are recommended, we at the staff level are expected to provide, and routinely do, that advice along with the potential cost impacts to our taxpayers. In fact, it was from that type of process that the \$360-million estimate came about, because the impact figure was calculated by our colleagues in the Municipal Finance Officers' Association.

Municipal administrators and councils have been and are struggling with the whole property tax issue. As you know, we're facing a huge infrastructure deficit. We're also trying to meet our obligations in many of those cost-shared programs where we partner with the province to deliver health and social services. Adding any additional compensation costs as a result of the arbitration process, as is suggested in Bill 206, will just simply add to that problem and it will make it more difficult for us to meet the expectations of property taxpayers in our municipalities to keep a lid on property tax increases.

1710

The bill, as it's proposed, is a devolution of responsibility, and it also has as one of its components a provision to encourage supplemental plans for fire and police service employees. We feel it's unfortunate that the devolution was not dealt with independently, which would allow for plan changes to be determined by the new sponsors corporation, which could attempt, over time, to build a working relationship between the parties before having to revert to the labour disputes arbitration model, which would impose change by external parties. There doesn't appear to be any urgency, either, in dealing with plan surpluses in the immediate future.

In fact, the opposite is the case. We understand that the increase in contribution rates, although it's only 0.6% on the salaries, represents a 9% increase in the cost of pension contributions to the employer and to the employees, and an increase is likely sooner as a result of additional increases due to a potential plan deficit. We know that the 0.6% increase is an immediate increase, and there could be increases beyond that as well.

We're also being told that we shouldn't worry too much about the impacts of the bill, that we should rely on our negotiation skills to avoid any taxpayer impacts, but we know it's not that simple. We know that benefits that are negotiated in one agreement make others susceptible. I think an example is the retention pay for police and fire, and the fact that it took three years for that to spread throughout the sector, with its costs.

Our individual municipal estimates, as a result of Bill 206, show impacts that could range from \$30 to \$40 to \$50, up to \$70 per household. One of the things we have to look at is that, rather than that kind of increase being dedicated to an increased cost of a pension plan, if that same money was used to support the infrastructure deficit and if it was used to service the debt to reduce that deficit in infrastructure, there's probably several billions of dollars of work that could be done to revitalize roads, bridges and sewers, for example. That would have a returned economic benefit for all the residents of Ontario.

As municipal administrators, we experience or observe the decision-making process that takes places and we're concerned that the simple majority rule that's proposed for the sponsors corporation isn't the best way to go. We believe that decisions regarding benefits or rates in pension plans shouldn't be taken lightly, and we support the suggestion that unanimous support is required among the sponsors, or at least a super-majority of the sponsors. For that reason, we're suggesting that at least a two-thirds majority should be required to effect any change before the arbitration process is used.

Some parties see devolution as yet another opportunity to negotiate improved compensation for their members, and they believe the sooner, the better. We believe it should instead be an opportunity for the parties involved to learn how, without the paternal gaze of the province as sponsor, to manage and develop a pension plan for the mutual benefit of taxpayers and employees alike. Instead, Bill 206 will likely have the effect of promoting conflict and hastening referral disputes and plan changes off to arbitration, only to serve the interests of a minority of the stakeholders.

We think there is more time required, a longer transition period for Bill 206. We don't see any economic urgency for its implementation at this time. But if it's not possible to extend the timeline, we think that at least amendments should be referred for public consultation because this is a very complex subject and everyone should be aware of its ramifications.

The members of OMAA, as senior municipal administrators, are not pension specialists. We come from different technical backgrounds but we have in common a general overview of the municipal government scene. This bill, as it's currently structured, appears to place substantial unproductive pressures on municipal finance, labour relations and taxpayer service at a time when Ontario property taxes are at Canadian and internationally extremely high levels. We also know that in relation to some of the services that are provided in Ontario, the costs of providing police and fire services are already higher than they are in the rest of Canada.

In conclusion, we encourage the committee to slow down the legislative process and take a careful look at how this bill might be revised to provide long-term benefits to a greater range of stakeholders, taxpayers and employees alike than in the form in which it's currently drafted.

We appreciate the opportunity to present to you today.

**The Chair:** You have left about three and a half minutes for each party to ask you questions, beginning with Mr. Hudak.

**Mr. Hudak:** Mr. Trojan, thank you very much, and the gentleman beside Mr. Trojan, the handsome fellow whose name I just forgot. I apologize.

I appreciate your point about extending time for consultations and, as a further point, if amendments are brought forward, to consult on those as well. So while I failed to get CUPE, I've got at least one-one, and with Lou Rinaldi's comments in the Northumberland News,



we might be ahead on this one. I'm pleased to see that my colleague Mr. Hardeman has brought that forward, because I do think we need more time for consideration.

We're hearing an increasing characterization of this bill as not truly devolution; that it's more downloading in sheep's clothing and that if it were truly a devolved model—

**Mr. Rinaldi:** You know all about downloading.

**Mr. Hudak:** See, we get heckling in here. But apparently they thought that wasn't enough—

**Mr. Rinaldi:** You know all about that.

**Mr. Hudak:** Apparently Lou thought that wasn't enough and wants to do a lot more.

**The Chair:** Mr. Rinaldi, please let him finish.

**Mr. Hudak:** Basically it's not permissive in any sense. It's actually very directive in terms of, when it is handed over to the sponsors corporation, there is a whole slew of things that must be followed, including, among other considerations, supplemental plans, and under the arbitration model it really means that it will probably come into effect.

So you like devolution, but you'd like to have true devolution where these terms are not directed to the new sponsors corporation?

**Mr. Trojan:** I think there's some acceptance of the fact that perhaps devolution needs to take place, but we believe there should be some autonomy with that devolution. The sponsors corporation should be able to determine what the changes to the plan should be, and they shouldn't be bound by certain directives that are contained in the legislation, directives that we believe will ultimately become a reality because of the arbitration process.

**Mr. Hudak:** I think the minister's characterization that this is devolution doesn't meet with the facts.

You also talked about a two-thirds majority on the sponsors committee for any significant changes. I think AMO's presentation indicated HOOPP, for example, a multi-member plan, requires unanimous agreement for any contribution changes. CAAT requires unanimous consent of the sponsors. Similarly, the BC plan is unanimous as well for contributions, and the contemplated model in Alberta was a majority of three quarters. Are you satisfied that two thirds would be enough as a majority, or do you think the other models are preferable?

**Mr. Trojan:** As municipal administrators, we're always willing to compromise. Given the significance of the plan, we don't have difficulty with the other recommendations that are looking for unanimous or a super-majority. We're saying two thirds as a minimum.

**Mr. Hudak:** Thank you, Chair.

**The Chair:** You have a whole minute left. You're not going to use it? Mr. Hardeman, do you want to use it?

**Mr. Hardeman:** Thank you very much for the presentation. I just wanted to know, on the issue of the super-majority as it relates to the supplemental plans—and you said you weren't lawyers—the way it's written, does “shall consider” mean to you that the organization, the

sponsoring body, actually has an alternative? If you were reading that as a municipal document—“shall consider” supplementary plans—does that mean they could consider them and not have them?

**Mr. Trojan:** “Shall” is pretty strong.

**Mr. Nigel Bellchamber:** Usually, the word “may” is used when it's permissive.

**Mr. Hardeman:** I guess that was really the question. We've had “shall be consistent with” or “shall have regard to” brought up before in municipal circles. There seems to be a great difference in that. I was wondering about “shall consider,” whether in fact we haven't already got to the point where it is mandated to have those supplementary plans.

**The Chair:** I think you already got your answer initially, and your time is up, Mr. Hardeman. Ms. Horwath.

1720

**Ms. Horwath:** You might have been in the room when I asked a previous presenter about this: the extent to which in the process of collective bargaining—the increased pressure, for example, for a supplemental plan or an increase upward in the 1.4, to be more favourable to the workers—to what extent that would have an opposite and downward pressure on the asked-for wages at the negotiating table? Any comment on that?

1720

**Mr. Bellchamber:** I think, historically, that isn't something that we've seen. We don't see at the negotiating table, at least in my experience, that folks will come with, “We'll give this up if you give us this.” That's never the starting point.

**Ms. Horwath:** No, it's never the starting point, but that's the whole point of negotiations, right? You put a whole bunch of stuff on the table; at the end of the day, you don't expect to get everything. You negotiate the various employer requests and you end up somewhere in the middle, if you have a collective agreement. If you don't think that's what you've experienced, that simply was my question. So we'll leave it at that.

An issue came up earlier about the extent to which arbitration, for example, specifically interest arbitration with emergency workers—because that's what's required. They don't have the right to strike, so interest arbitration is what comes into play if you cannot get a collective agreement. One of my colleagues indicated that in a meeting earlier today there was the suggestion that arbitrators wouldn't consider improvements to pension as a part of the package when they're looking at an interest arbitration decision. Any comment on that? I don't understand how that can be the case. It seems to me that interest arbitration is interest arbitration: All the interests are on the table; all of the pieces of a package that would be wage-related, for example, would include pension.

**Mr. Trojan:** It would, yes. We believe it would. It's part of the compensation package.

**Ms. Horwath:** It is part of the compensation package.

**Mr. Trojan:** I don't see how it could be excluded.



**Ms. Horwath:** OK. That's my understanding as well; I also come from the municipal sector. I don't know where that came from, but my understanding is that that was suggested as one of the other fears some of the employer groups have, that at the interest arbitration table, arbitrators won't even take that into consideration as something that they deal with in the package.

**Mr. Trojan:** Some of the concerns that we're having, and what we've experienced, is that the arbitrators don't necessarily take ability to pay into consideration to the extent that they should, especially in those sections of the province where the average income levels are lower and the ability for the taxpayers to absorb additional impact doesn't necessarily factor well into arbitration decisions. In very few of the decisions have they taken that into account.

**Mr. Belchamber:** I think if you're calculating or estimating a municipal budget, you're estimating what your pay equity plan might be, you're trying to calculate total compensation: pensions, benefits, wages. They all come into play. It's part of the package.

**Ms. Horwath:** Do I have any more time?

**The Chair:** Four seconds.

**Ms. Horwath:** Thank you very much. It was nice meeting you both.

**Ms. Matthews:** Thank you very much, and welcome. Nice to have you here. I want to get to an issue that we've been hearing about a lot, and that's the costing issue. We've heard very different estimates from different groups that have appeared before us.

I believe you, I believe AMO and I believe other municipalities that have come forth, but I also believe the firefighters and the police association. It seems to me the problem might be that different groups are using different assumptions to come up with their estimate of a cost.

I wonder if you could clarify what assumptions are in your cost estimate, firstly. Then, I want to ask you about solvency and whether you think we should reconsider the solvency requirements, and if so, if you have any thoughts on that and what impact that would have on the cost estimates.

**Mr. Belchamber:** You've already had a presentation from the municipal finance officers. As Mr. Trojan said, we relied on their numbers for our calculations. Again, there was a template provided to municipalities so that we're calculating on a consistent basis.

Certainly, the numbers included a range of improvements or enhancements for all sectors of the employee workforce, but they didn't include everything. For instance, we heard a presentation just a few minutes ago that talked about three-year final average earnings. Those weren't in the calculations that were done behind the numbers that we presented today. There are other rebound costs that aren't in those numbers; there are other administration costs. I think I heard another presenter talk about that.

So they're not worst-case scenarios. They won't happen overnight, very clearly, because it takes several years for some of these things to work their way through the system, whether it's negotiations or arbitration. But

we're convinced that they surely will work themselves through in a period of five years, probably. That would be my estimate based on the current bill. As Mr. George has said, in five years there's \$300 million that you don't have to invest in the difficulties we face in infrastructure.

**Ms. Matthews:** But you are assuming full take-up of the options.

**Mr. Belchamber:** We haven't seen too many emergency services departments suggest that they really didn't need retention pay when they saw others receive it.

**Ms. Matthews:** First of all, there's an equal cost to the members, and some of them—you wouldn't want both—are a bit redundant. Anyway, maybe I'll just leave it, then.

Any information on the assumptions would really help me understand what the variation is in these estimates, and then the solvency issue, if we have time, Chair.

**The Chair:** You have 30 seconds.

**Ms. Matthews:** On the solvency issue, if you have any thoughts on that particular—

**Mr. Belchamber:** Clearly, the rate that's used to calculate solvency is a concern, and the treatment just as if it were a private sector pension of a business that may or may not be a going concern is a challenge. That would be to the benefit of employees and taxpayers generally if the solvency rules were amended to take reflection of the fact that we're not going to close up shop and take off tomorrow.

**The Chair:** Thank you very much for coming today. We appreciate your being here.

## CITY OF WINDSOR

**The Chair:** Our next delegation is the city of Windsor. I won't even attempt your name because I know I will fracture it. So, if you could help Hansard by pronouncing your name.

**Mr. John Skorobohacz:** John Skorobohacz. I'm the chief administrative officer with the city of Windsor.

**The Chair:** Welcome. We're getting your handout right now. When you begin, you'll have 20 minutes. If you leave some time, we'll be able to ask you some questions.

**Mr. Skorobohacz:** Thank you very much. Madam Chair and distinguished members of the committee, I appreciate the opportunity to be down here today to speak to the committee on Bill 206 and the potential implications of Bill 206 to the corporation of the City of Windsor.

First of all, following the excellent presentation by the AMO president, Roger Anderson, a few days ago on behalf of the more than 380 members of the Association of Municipalities of Ontario, and following the presentations by my other esteemed colleagues, I will not take up a great deal of your time repeating a lot of the same arguments that have been put forward so eloquently.

I'm here today to describe the potential impact on our municipality, the corporation of the City of Windsor, which will arise as a result of the proposed Bill 206.



As you might be aware, the Municipal Finance Officers' Association of Ontario created a simple yet effective template for municipalities to determine the local impact associated with increased OMERS pension costs arising from supplemental plans for the normal retirement age of 60 for police and fire and the normal retirement age of 65 for members. Our finance department at the city of Windsor used that template to calculate the cost to the taxpayers of Windsor of the potential supplemental plans. The finance department determined that the municipal contribution for the NRA 60 supplemental plans would be approximately \$4.8 million, equal to a 101% increase; for the NRA 65 supplemental plans, the increase would be approximately \$1.27 million, equal to a 20% increase, for a total of more than \$6 million to our taxpayers.

The city of Windsor is in the midst of dealing with the 2006 budget challenges. Our city council is determined to hold the line on those tax increases. In order to do so, we have instructed every one of our departments to make 9.3% budget cuts across the board. The 9.3% budget cuts do not take into account any increased costs due to the changes brought about by Bill 206. We can only achieve such significant cuts through the elimination of municipal services, as well as shrinking the municipal workforce.

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Let me tell you what finding an additional \$6 million in existing program and service cuts from the city of Windsor budget might mean to our community. Six million dollars is what the city of Windsor budgeted to operate our 256-bed Huron Lodge home for seniors in 2005. Six million dollars is approximately equal to what we spent to run our entire recreation department and all of the programs and services. Six million dollars is twice what we granted to all of our important community agencies, including the Essex Region Conservation Authority, the Windsor-Essex County Health Unit, Handi-Transit, Centres for Seniors Windsor, the Windsor-Essex County Development Commission, the arts council of Windsor, the Art Gallery of Windsor, and the Windsor Symphony. It's more than we spent on our roadway rehabilitation program within the capital budget last year. These are just a few examples of the potential budget impacts that \$6 million in increased OMERS costs would mean to Windsor taxpayers.

I trust that you have an appreciation of the real impact that \$6 million has on us in Windsor, and finding that much each and every year in a municipality that's already stretched far too thin would be an onerous task. These potential additional costs would come on the heels of the currently proposed 0.6% increase in the contribution rate for employers and employees. As you heard previously, that amounts to a 9% increase in contributions.

My colleagues at the regional municipality of Halton have called for an actuarial analysis regarding the potential cost of the proposals within Bill 206. I urge you to heed this call so that any changes to the current governance of OMERS will be made on the basis of known and agreed-upon financial data. We need to get all of the

facts before we make decisions that will saddle local governments with greater financial challenges.

In addition to the potential financial burden to the taxpayers of Windsor, we are very concerned about the potential destabilization of OMERS that will occur due to the legislative changes. Both employers and employees have always taken comfort in having the provincial government act as the sponsor of the plan. Yes, at times this may have resulted in delays in making changes to the plan. Yet, on balance, stakeholders could know that due deliberation would be brought to bear when people's essential means of post-retirement support were at stake.

It's difficult to comprehend a worse time for introducing potential destabilizing changes to the plan's sponsorship than now, when OMERS is underfunded by \$2.4 billion as of June 2005 and facing a deficit that is projected to worsen over the coming years. The average employee is finding it very difficult to understand how a swing of such magnitude could have occurred over the space of a few short years.

Now, in addition, Bill 206 proposes to introduce further insecurity into the governance process. We must have effective governance to restore financial security to the plan. As an employer with more than 2,500 full time employees, stability of both the governance and financial position of OMERS is of utmost importance to the city of Windsor.

We are quite concerned about the 50-50 split with respect to employer-employee representation on the board. The 50-50 split of employee-employer representation on the sponsors board has been aggravated by the proposed change in procedure that would allow decision by simple majority rather than the consensus protocol currently in use, or at least a supermajority. Employers and employees would be vulnerable to decisions based on the need to sway one single vote, as opposed to the in-depth discussion and deliberation needed to achieve a consensus. The time taken to reach consensus is a small price to pay for peace of mind in knowing that all decisions that have been reached through a rigorous process of research, analysis, debate and discussion lead to a successful conclusion.

I urge you to protect the public interest by not allowing Bill 206 to proceed, as currently framed, on a simple majority provision, nor with a provision for mandated and binding arbitration. An arbitrator has no fiscal restraints when making an award. In the past, arbitration has had little regard for an employer's ability to pay or for a community's priorities. Arbitrators regularly increase awards but rarely reduce them. The taxpayer is not adequately represented or protected in the binding arbitration process.

Members of the committee, I am here on behalf of the corporation of the city of Windsor to encourage you to take the time needed to consider my submission and those of my other municipal colleagues. If you require more information from municipal stakeholders, we're here to assist you and we're willing to provide that information. I urge you to consider an actuarial analysis to determine the potential costs of the proposals within



Bill 206, particularly those in regard to supplemental benefits that could be imposed upon employers in the fire and police sectors through the labour arbitration process.

In conclusion, I would urge you to take the time to do the research to ensure that any changes are in the best interest of the taxpayers, municipalities, school boards, employees, OMERS and the Ontario economy. Please do not let a proposed proclamation date of January 1, 2006 rush you into decisions that our taxpayers, employees and future pensioners will pay dearly for if the current Bill 206 is proclaimed into law.

I thank you very much for taking the time to listen to my submission.

**The Chair:** You've left four minutes for each party to ask you questions, beginning with Ms. Horwath.

**Ms. Horwath:** I'm interested in the last page of your document, which talks about the process for the sponsors board to undertake. I'm wondering about that, because I come from the municipal sector as well. I was a city of Hamilton councillor for several years, when it was double-tier—regional and city—as opposed to what we have now, which is an amalgamated city. I can tell you that—well, let me ask you: How often is it that your council comes to consensus on decision-making?

**Mr. Skorobohacz:** I would suggest to you that certainly it operates on a simple majority basis; however, it's not without a significant amount of public deliberation and consultation. I would suggest to you that most councils, to my knowledge, will take the time to study the issues and ensure that they've engaged the public to understand the concerns of the public before they vote. But I do agree with you that it's not always the norm.

**Ms. Horwath:** The reason I ask it is because you'll know from the structure that the sponsors corporation actually has two advisory committees responsible to do the very work that you're describing, which happens at the council level, in terms of doing the research, consulting, finding the facts and figuring out exactly what it is they're recommending to the sponsors corporation for decision-making. That's a two-way street in terms of advice back and forth. Many others from the municipal sector have raised this same issue about representation. It just struck me that nowhere else do we suggest that people put in extremely serious positions of decision-making simply do that willy-nilly and it's just a matter of the last person that you spoke to, that's how you're going to vote. Certainly, that wasn't my experience at the municipal level.

There is no supermajority required at the municipal level, yet municipalities are coming forward expecting that the sponsors corporation to have this extremely difficult-to-achieve threshold before any decisions will come out of that sponsors corporation.

I raise that and I want to get some further understanding of why it is, notwithstanding the fact that there are advisory committees for police and fire and for other plan members in the sponsors corporation, with all of the experience from the various municipalities we've had before us, that we still think that a supermajority or

unanimity consensus is required by the sponsors corporation.

**Mr. Skorobohacz:** I would suggest to you that perhaps the single most important reason is the fact that we're entrusted with the taxpayers' dollars, and to ensure that the taxpayers' dollars are invested to the best of the ability of that sponsors group. Certainly, to allow it to have the fullness of the debate and discussion in an effort to reach a consensus position perhaps is a means of achieving the best decisions possible.

**Ms. Horwath:** Do I have any more time?

**The Chair:** Forty seconds.

**Ms. Horwath:** I wanted to ask you a question as well on your figure of—is it \$6 million?

**Mr. Skorobohacz:** That's correct.

**Ms. Horwath:** Can you remind me how you came up with that figure of \$6 million in terms of the budget pressure for Windsor?

**Mr. Skorobohacz:** Essentially, that figure represents the cost of the additional supplemental plans as calculated both for the NRA 60 supplemental plans as well as for the NRA 65 supplemental plans. The estimate that we've used has been based on the same logic and template that previous presenters have spoken about. The Municipal Finance Officers' Association developed that template and it amounts to about \$4.8 million for the NRA 60 and about \$1.27 million for the NRA 65.

**The Chair:** Thank you. Mr. Duguid.

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**Mr. Duguid:** I just want to continue on the line of questioning from Ms. Horwath. I'm looking at the numbers that you're using. It's clear to me that the template for municipalities used by the Municipal Finance Officers' Association assumed 100% take-up. Now, we've had the police association come before us; we've had the firefighter association come before us. We've had a number of experts tell us that that is absolutely, totally unrealistic, that 100% take-up would not happen. Even the very employees who are seeking some of these changes are suggesting that their employees couldn't afford 100% take-up. So it's a scenario that is certainly, at best, a worst-case scenario.

I recognize that there are other costs that may not be included in that, but when you look at those other costs—and I've seen the figures on them—they're a small fraction of the amount that's actually being talked about here. So those other costs are very small amounts compared to the overall costs that are being suggested. Can you confirm that those cost estimates are based on 100% take-up?

**Mr. Skorobohacz:** That's correct. Our assumption is that, based on the experience we've seen certainly across the province, the issue in terms of the arbitration process typically does lead toward the higher settlements, the higher standard, that it very seldom goes to a lower standard. Our concern from a municipal perspective is that managing those types of supplemental plans through an arbitration process is not the most appropriate means of achieving the kind of solutions that you're speaking of.



**Mr. Duguid:** So even though the cost estimates being brought forward may be out of whack, you're still anticipating that?

**Mr. Skorobohacz:** The potential is there. That's correct.

**Mr. Duguid:** The other question I had is, have you considered the area of solvency relief? We've had a number of individuals on all sides of this particular issue talk to us about solvency relief and how that will reduce costs for everybody concerned. We'd be interested to know if you have a position on that particular—

**Mr. Skorobohacz:** I haven't presented any position here.

**Mr. Duguid:** I guess the only thing I would say is, you're looking at 2006, and you're a little worried about your 2006 budget. Do you really think that by the time this has passed and by the time you get into your 2006 cycle, there would be a financial impact that early on something like this?

**Mr. Skorobohacz:** Potentially, there would. We are certainly looking at negotiations, both with our fire service as well as our police service. Certainly, those negotiations may be protracted, subject to the timing as to when this is proclaimed. There may be issues. We've agreed to exchange proposals in the new year, as opposed to 2005, so there's always a potential that we might see some of the implications that I speak of coming forward in 2006.

**Mr. Duguid:** How's my time?

**The Chair:** You have a minute left.

**Mr. Duguid:** Last question: You've indicated a concern about devolving the plan down to employees and employers. I guess I'm looking for justification as to why you would think that employees and employers would not be the best people to run their own plan. Why would you think the province should be running somebody else's plan for them?

**Mr. Skorobohacz:** I believe that at the present time, based on the way the bill is structured, the suggestion would be that until we have clarity with regard to all of the elements of the bill, it would be appropriate for the province to continue to be the sponsor till we can ensure that the taxpayers' interests are best protected.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation. Everyone who's presented, whether they were supportive or not supportive, has talked about the cost, and there seems to be quite a variance. We've heard the questions about what's causing the variance and so forth, and I guess I'm just personally disappointed—I say that to the rest of the members of the committee, as opposed to the presenters—that we don't have some documentation that government created when they prepared this bill for discussion that says, "In our opinion, this is what the impact will be in cost for this plan." This afternoon, we had your presentation that it's going to cost the city of Windsor \$6 million, and we had the police association saying that it's only \$300 per person. At \$6 million, it's a lot of people that would then be involved. I would hope that the government, before we get much

further in this bill, would actually come up with some numbers. If this is the worst-case scenario, I'd like to know what the likely scenario is and the process.

The other thing you mentioned—at this time, particularly if you're looking at the supplemental plans, why are we devolving the plan? Nobody's asking for it. You said that maybe it will make it a little easier to handle; things are taking too long with the government. How often does the municipal corporation collectively ask for changes that the OMERS plan considers to improve or to decrease the value of the plan? How often would that happen? You say it could take up to three years for them to make the change, but how often would that change be asked for?

**Mr. Skorobohacz:** I would suggest to you that it doesn't happen often. Those kinds of requests are not that frequent. Certainly, from a municipal perspective, I think we would be looking at wanting to do our due diligence. Just on the point you raised earlier in terms of ensuring that we understand the gravity and magnitude of the issue, I would refer to the position the regional municipality of Halton has suggested in terms of obtaining an actuarial analysis of the implications of the bill. I think that would support the arguments as to how often changes need to be made and what types of changes should be in place. Having that type of data and information would be very helpful to anyone considering legislative changes of this magnitude.

**Mr. Hardeman:** It's suggested that the issue of a two-thirds majority or a super-majority for making changes is somewhat out of the ordinary—at Queen's Park we work on a simple majority and the majority always rules, and I think we do that at the municipal level. But I would just point out that there are cases at the municipal level where we do have certain important decisions, like a reconsideration, that require a two-thirds vote. Is that not—

**Mr. Skorobohacz:** There's no question that procedural bylaws and procedural—

**Mr. Hardeman:** Putting that in there would not be onerous on this board any more than any other?

**Mr. Skorobohacz:** I wouldn't perceive it that way.

**The Chair:** Thank you very much for being here. We appreciate your time.

**Mr. Hardeman:** Madam Chair, before I forget, I wonder if we could get a report from the government side or from the researchers about solvency—

**The Chair:** I believe you got a document on solvency today.

**Mr. Hardeman:** We got it today?

**The Chair:** The ministry provided it. That's what I spoke about. There were two—

**Mr. Hardeman:** OK. I just wondered. I have a concern that I don't understand it, or it's not in fact going to save anybody any money one way or the other.

**The Chair:** There are actually two documents on your desk. One was governance and one was solvency. So you got it earlier today. Did you need additional information?

**Mr. Hardeman:** No. When we find it, that's all we need.

**The Chair:** Good.



CANADIAN UNION  
OF PUBLIC EMPLOYEES  
ONTARIO SCHOOL BOARD WORKERS  
COORDINATING COMMITTEE

**The Chair:** Our last delegation is the Canadian Union of Public Employees, Ontario school board workers committee.

Welcome. Thank you for coming today. I only have one name here, so if all of you are going to speak, could you identify yourselves for Hansard. After you've introduced yourselves, you'll have 20 minutes. Should you use all that time, we won't be able to ask questions, but should you leave time, I'll let you know how much time there is. Do you have a handout?

**Mr. Frank Ventresca:** Yes. It has been handed out.

My name is Frank Ventresca. I am the president of CUPE Local 4156, District School Board of Niagara. I am also the chair of CUPE's Ontario school board workers committee. I am joined by Judy Wilkings, legislative liaison, and Antoni Shelton, executive assistant, CUPE Ontario.

I represent 1,400 members. My members are educational assistants, child care workers, elementary and secondary school secretaries, general office staff, maintenance workers, grounds workers, caretaking staff and computer technicians. CUPE represents 45,000 school board workers in Ontario.

I'm here to talk about a group of CUPE workers who need to be heard at these hearings. These are workers, the vast majority women, who, due to their jobs at school boards, only work 10 months of the year. Bill 206 will have the impact of systemically discriminating against these women. This is an indirect form of discrimination. Discrimination, whether it is intentional or not intentional, still has the impact of creating adverse circumstances for a significant group of workers that I represent. I welcome the opportunity to make a submission on Bill 206.

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CUPE represents the majority of active OMERS plan members—over 100,000 members. OMERS is a workplace pension plan. Its only purpose is to provide a retirement wage for its members. The fact that OMERS happens to be a public sector workplace pension plan should not cause diversion from its purpose of being a pension scheme. Retirement wages that keep seniors out of poverty mean that municipalities, in every way, are better off. Financial dignity in retirement must be the only goal for any workplace pension plan, including OMERS.

It has long been our view that OMERS should not be an act of the provincial Legislature but rather a stand-alone pension plan regulated by only the Pension Benefits Act and the federal Income Tax Act. The provincial government has joint management of its pension plan with its workers. We are only asking for the same treatment the provincial government gives its own employees.

Having said this, like many other speakers before me I am here to tell you that Bill 206 is terribly flawed. Before I speak specifically about school board workers, I want to emphasize several overarching points that must be addressed through amendments.

**Selection:** Representation by population must be a key principle in making appointments to the sponsors and administration corporations. As far as the principal stakeholders—the significant trade union and employer groups—are concerned, representation has to be based on the membership size of each group. As things stand in Bill 206, the Canadian Union of Public Employees is grossly underrepresented. This has to be corrected. Otherwise, the proposed structure will be loaded against a particular group: the group with the largest number of active plan members. This outcome would be grossly unfair. I want to strenuously add my voice to those who recommend that representation by population be a key principle governing appointments to the sponsors and administration corporations.

**Oversight and accountability:** It is completely unacceptable that the sponsors corporation is given no duty or power to oversee the work of the administration corporation. Bill 206 must enable us to be the masters of our own pension house. My members are demanding accountability. My members have signed over 800 cards calling upon the government to make changes to Bill 206 that allow our members to truly be in charge of their own pension plan. It is our view that we can no longer afford to delegate responsibility for our pension plan to a government that doesn't pay a nickel into the plan, or to pension bureaucrats who comprise the administration corporation. My members look at what is going on with the Borealis fiasco over at OMERS and the current deficit in the plan, and the situation at Stelco, and they are very concerned about the future of their pension plan.

The administration corporation is not generally accountable to the sponsors corporation, nor does the sponsors corporation have any power to compel the administration corporation to account for its administration of the plan or its management of fund assets. We want to see the mandate of the sponsors corporation significantly enhanced to include oversight of the activities and decisions of the administration corporation, and that the sponsors corporation be given all necessary powers to ensure that such oversight is effective. However, the issue that most directly discriminates against my members is the unfair provisions in Bill 206 that restrict the ability of the sponsors corporation from negotiating significant pension improvements for the normal retirement at age 65 group.

**Funding and benefit improvements:** Bill 206 contains a number of highly restrictive rules regarding funding which serve to undercut the autonomy of the proposed governance model and to ensure that the province of Ontario, through its legislative power, maintains control over major aspects of OMERS governance. These provisions essentially undermine the autonomy of OMERS.



One significant limitation is the cap on employer contribution rates, contained in section 12 of Bill 206. That provision prohibits municipalities or local boards from making any contribution to fund a benefit that exceeds an accrual rate of 1.4%. The cap of a 1.4% accrual rate for a normal retirement age of 65, which is used to multiply an employee's average annual earnings over 60 consecutive months multiplied by the employee's years of pensionable service, will not only disadvantage CUPE workers and have them retire into poverty because of their average income of \$30,000, but will doubly disadvantage primarily women who work in my sector and earn an average of \$27,000 per annum, and even less in some regions of the province.

For teachers in Ontario, the least amount they can make is \$38,000, and for firefighters it is \$43,000. Of course, their average rate is going to be much more, yet on top of their higher wage, the teachers' plan offers an accrual rate of 1.55%. Bill 206 is proposing an accrual of up to 2.33% for firefighters—50% higher than the rate permitted for my members. There is no other group in OMERS that will be discriminated against like my 10-month workers. The 1.4% accrual rate cap has a compounding effect when you consider the dramatic differences in salaries among workers in the OMERS plan.

Why would Bill 206 provide the ability to negotiate a higher accrual rate for some of the best-paid workers, the normal retirement age 60, predominantly male, but take away the ability to negotiate a significant improvement for the worst-paid in the plan, predominantly female? This is systemic discrimination. Education assistants, child care workers, elementary and secondary school secretaries, general office staff and instructors are all 10-month employees. The majority of 10-month employees work between 6.5 to seven hours a day. Bill 206 is using the heavy hand of legislation to create within OMERS a pension ghetto for the 10-month employees.

Using the accrual formula of 1.325 multiplied by \$27,000 times 30 years of service equals \$10,732 per annum in retirement. Using the capped accrual formula of 1.4 times \$27,000 times 30 years of service equals \$11,340 per annum in retirement. This means the best improvement my 10-month employees could currently hope to get with the accrual rate at 1.4% under Bill 206 is \$608 more per annum. That's the maximum.

You're offering our employees, with Bill 206, retirement into poverty, retirement without dignity. This is unacceptable to us and should be unacceptable to you.

This situation in the school board sector is further compounded by the state of our health benefits. Up to 1999, in school boards across the province, if you retired before 65, they covered medical benefits up to age 65, so these expenses wouldn't come out of your small pension. We all know what happens to our health as we hit old age. If you use my situation as an example, in the year 2011, I would have 30 years of service, and under OMERS I could go with unreduced pension. However, with just the current medical needs in my family, it is not possible, given my expected income from OMERS,

because I no longer have employer-paid medical up to 65. This benefit was stripped away after amalgamations to save cost.

These are some of the realities that my workers will face when they retire. I am asking you to consider very carefully the impact that Bill 206 will have on some of the most vulnerable workers currently in the OMERS plan. This is why we recommend that section 12 of Bill 206 be eliminated and that OMERS stakeholders be permitted to design benefit and contribution levels autonomously, within the parameters that are generally applicable under the Income Tax Act.

Thank you.

**The Chair:** You've left about three minutes for each party, beginning with Mr. Duguid.

**Mr. Duguid:** Thank you very much, Madam Chair. I don't even know if I'll need the full three minutes.

Thank you for being here, and thank you for a very in-depth presentation. The question I have is around your suggestion that representation by population is a key principle in making appointments to the sponsors and administration committees. Maybe you could get into a little more detail as to what you have in mind in terms of what you think the appropriate representation ratio should be. It wasn't specific in here, and I'd just like to know if you have a particular idea.

**Mr. Ventresca:** I'll refer this to Antoni Shelton.

**Mr. Antoni Shelton:** Mr. Duguid, we recommend that CUPE, at the very minimum, have an additional seat on both the sponsors and the admin corporation.

**Mr. Duguid:** One additional seat for CUPE.

**Mr. Shelton:** At a minimum.

**Mr. Duguid:** Minimum, OK.

The only other thing I'd say is, one of the reasons we've taken this to committee at first reading is to make sure that we have an opportunity to hear from all stakeholders. There will be amendments made as we move forward, and we'll certainly take into consideration some of the suggestions that you've brought forward here. I thank you for taking the time to put together a very in-depth presentation.

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**The Chair:** Does anybody else on the government side have any questions? No. OK.

**Mr. Hardeman:** Thank you very much for the presentation. We've had a number of presentations from different locals of CUPE. I find that they're very consistent on the issue of the 1.4%. I think anybody would see that if the other part of the pension plan is based on what is allowed by pension law on early retirement, it would seem hard to explain why the 1.4% is in there. Obviously, if we can go up to the pensionable amount, why could that not be negotiated the same as in other sections of the bill? I'm hoping the government is listening to that as to what needs to be done.

One question that I do have a bit of a concern with in your presentation is the issue of representation by population. When you look at the basis of both bodies, they're based on 50% workers and 50% management



organization, not necessarily from different representatives of the workers or different representatives of management. There's going to be a lot of municipalities that are not represented at all on the management board. If you start looking at rep by pop, would it not then be reasonable for every organization to want to have at least one representative representing them? If they were a very small portion, then proportionately, CUPE would have to have, instead of one representative, 45 representatives in order to have proper representation. I'm wondering whether the interests of workers are not consistent with all workers.

**Mr. Shelton:** Generally, we're looking at seats that have been provided for AMO. We believe that, on the employee side, CUPE is a similar type of body in terms of representation and coverage in terms of the OMERS plan—upwards of 45% on the employee side represented—and we believe that we should have, at least, the same kind of representation that AMO is afforded.

**Mr. Hardeman:** Thank you very much, and thank you for the presentation.

**Ms. Horwath:** I was asking Local 79 about the numbers and you had them in your brief, which was very good. I appreciate that.

I asked earlier, and I think Mr. Hardeman raised it as well, this issue of devolution of OMERS out from under the wing of government into a more independent plan has been around the table for quite some time. Is that not true? This is not new in terms of the concept. My understanding is there have been various tables, various discussions, various talks—mostly not very successful. Were you surprised to see the 1.4% cap brought forward in Bill 206?

**Mr. Shelton:** We were, to say the least, shocked. It was not something that we were consulted on or were alerted that it would even be part of any autonomy, legislation or paper by OMERS or the government.

**Ms. Horwath:** It seems to me that that's a significant issue, and it's one that I think you've described very aptly as systemic discrimination, when you look at how it would roll out, compared to some of the other pieces of the legislation. I find it disconcerting, at the very least, that it was put in here, yet nobody seems to know from where it came or from whom it came or how it ended up in this bill. I don't know if government has any response to that, but I certainly find it interesting.

I wanted to ask you a question about your reference to the need for the administration corporation to be accountable to the sponsors corporation. Can you talk about that a little bit?

**Mr. Shelton:** We've gone through at CUPE a very, very difficult relationship with the current OMERS administration. That difficult relationship stems from the nature of the current board and the way it is structured with regard to stakeholder relations. We've learned from that and we know that the sponsors corporation, representing the stakeholders, if it is to truly make informed decisions and to hold the administration corporation accountable, has to be allowed more resources than are

afforded under Bill 206. It has to be given the ability to meet more often than is afforded under Bill 206.

Something that's not been brought out in previous presentations is that there has to be more onus on the administration corporation to share information with the sponsors corporation. There needs to be a reporting relationship from the administration corporation to the sponsors corporation, which is not currently spelled out under the act.

**The Chair:** Thank you very much. We appreciate you being here today. Thank you for your time.

## COMMITTEE BUSINESS

**The Chair:** Our next order of business is Mr. Hardeman's motion. I believe everybody has a copy of it.

**Mr. Rinaldi:** On a point of order, Madam Chair: Just for clarification, we were given two documents today. One was the governance model, and what was the other?

**The Chair:** It was on solvency. You should have both documents. They were on your desk at the beginning, and they were together.

**Mr. Rinaldi:** They were together?

**The Chair:** Yes. They should have been beside each other. They were there at the beginning because the clerk is so efficient.

So we have the motion on the floor. Did you want to speak to it, Mr. Hardeman?

**Mr. Hardeman:** I've pretty much spoken to it already. I believe that from what we've heard and what we've seen, the number of people who have put their names forward who wanted to speak on the bill and who haven't been heard is much larger than those who have.

I'm suggesting, rather than moving on to clause-by-clause and not hearing what the presenters have to present, that we hold a few more days of hearings. I'm not suggesting that we hold hearings until there is no one left in the province who wants to speak, but I do believe we should have an extra few days, recognizing that we have four days but only eight hours of hearings on the bill. When we're looking at the largest pension plan in the province and what's going to happen to it, I think it's important that we have extensive consultation on what should or shouldn't be done. That's why I moved this.

I realize that at the end of the day the bill, after clause-by-clause, will go back to the Legislature for second reading. I just wanted this on the record to be sure that the request to have more public hearings—if we're not holding them all before second reading, we will be looking for extensive consultation following second reading before it goes for third reading.

**The Chair:** Further debate?

**Mr. Duguid:** I won't be supporting this motion and I'll tell you why. I'll defer to comments made by Ann Dembinski, president of the Canadian Union of Public Employees, Local 79, in Toronto. She said—and I think it's a view that's held by many others—that by deferring it any longer, this legislation will be disadvantaging the members even more. They want to get on with it.



I think government members would like to move forward with this legislation. It's been out for a long time now. Many different organizations have appeared before us. I would suggest it would be hard to find any stakeholder who is not represented by at least one of the organizations that has appeared before us with very in-depth and detailed presentations. I think the voice of everybody involved in this certainly has been heard through these presentations.

It's unfortunate and it's a little ironic—and the Chair would know—that the government members wanted to move forward with these hearings much earlier, so we would have had more time. Had our colleague Mr. Hudak agreed to that, we may well have had some more time to hold some hearings. Unfortunately, they would not agree with holding these hearings earlier to give us more time to hear from deputants, and unfortunately right now we're at a point where we've got to move forward with these hearings so we can try to get this legislation into the Legislature and move forward with these initiatives. The parties and the stakeholders have waited long enough for these changes and, as a result, the government members—I think I speak for all of them here today—are not going to be willing to consider any further efforts to delay this.

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**Ms. Horwath:** Notwithstanding the parliamentary assistant's revisionist view on the history of what happened, and some of the major stakeholders not even being in the province—in the country—when the government wanted to hold the initial hearings, I do actually agree with Local 79 and others who I've been talking to about the fact that it is now time to start putting this into place and seeing whether the government can take the very thoughtful and very important suggestions from the stakeholders, particularly the plan member stakeholders—from my perspective anyway—and make this work. It's been far too long that OMERS has not been under the control of the plan members and the plan sponsors. It's time that we take that on.

Having said that, though, I look forward to the mitigation of some of the issues that have come before us. There's not consensus, unfortunately, and we need to make sure that we're doing the right thing by the plan members who will ultimately be affected by the way this bill and this effort to devolve OMERS turns out.

Thank you for that. I'm not going to be able to support the motion brought forward by Mr. Hardeman.

**Mr. Hardeman:** I can do the math. I realize that the committee and the government side has decided that we're not going to have more public hearings. The one individual from CUPE suggested that it was time to get on with getting this bill done, but I would point out to the committee that almost everyone said that it was more important to do it right than to do it now. When we talk about how we've waited a long time, we couldn't get anybody to suggest that anybody had asked for this bill to come forward, as it revolves around devolution of OMERS in the presentation. You can go and look at it.

The people who said that it was time to get on with it were talking not about the devolution, but the improvements to the pension regime that's presently in place.

I recognize that the resolution is not going to pass. I just wanted to make sure it was on the record that the government seems to think it's more important to get this through before Christmas than it is to hear from the people who are going to be directly impacted by the changes they're making.

**Mr. Rinaldi:** For the record, in the preamble when the resolution was first brought forward earlier on this afternoon, there was a comment that municipalities north of Highway 7 weren't being heard. Coming from this sector, I take some offence to that.

I want to congratulate the Chair and the clerk for choosing the delegations that came here, because I was really impressed when they—

**Ms. Horwath:** That was done by everybody.

**Mr. Rinaldi:** Everybody. Unfortunately, I wasn't here today. But all I'm saying is they choose the eastern and western Ontario wardens, which as the member opposite would know, represents most of rural Ontario. I know that from my portion of rural Ontario, when you look at the number of municipalities that are represented by the eastern Ontario wardens—and I don't want to comment on the west—a number of those folks are north of Highway 7. AMO did an excellent job, and they represent the majority of the municipalities of Ontario. To make the statement about municipalities north of Highway 7, I think is totally inappropriate.

**Mr. Hardeman:** We could go on till morning. If the member would ask Hansard for a report, my comment was not that nobody from north of Highway 7 had been asked to appear; my comment was on a letter that a representative in the Legislature had written to the Chair of the committee, complaining that no one north of Highway 7 had been asked to appear. I stand by the fact that that's a letter that the Chair got and the Chair replied to, explaining to the member how the delegations were chosen. Each party got to choose out of the list of the many people who appeared, most of whom will not be heard. We each got to pick seven people. They didn't get picked from some areas, and I think that's why this resolution is forward, to make sure that all the people who want to be heard can be heard.

**The Chair:** Are you ready to vote yet, committee? Any more debate?

**Mr. Hardeman:** Recorded vote.

**Ayes**

Hardeman.

**Nays**

Dhillon, Duguid, Horwath, Hoy, Matthews, Rinaldi.

**The Chair:** That vote is lost.

I'd like to remind staff that there will be an interim summary available tomorrow based on the first three days of hearings. You should have it in your office after noon tomorrow. That's the tentative schedule; it's being edited today.

I'd like to thank all witnesses, members of committee and ministry staff for their participation in the hearings.

I'd just like to remind all members that amendments to Bill 206 should be filed with the clerk of the committee by 2:00 p.m. on Friday, November 25.

This committee now stands adjourned until 4:00 p.m. on Monday, November 28 for clause-by-clause consideration of the bill.

*The committee adjourned at 1815.*











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## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 28 November 2005

# Journal des débats (Hansard)

Lundi 28 novembre 2005

**Standing committee on  
general government**

**Ontario Municipal Employees  
Retirement System Act, 2005**

**Comité permanent des  
affaires gouvernementales**

**Loi de 2005  
sur le régime de retraite  
des employés municipaux  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 28 November 2005

Lundi 28 novembre 2005

*The committee met at 1622 in room 151.*ONTARIO MUNICIPAL EMPLOYEES  
RETIREMENT SYSTEM ACT, 2005  
LOI DE 2005  
SUR LE RÉGIME DE RETRAITE  
DES EMPLOYÉS MUNICIPAUX  
DE L'ONTARIO

Consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act /  
Projet de loi 206, Loi révisant la Loi sur le régime de  
retraite des employés municipaux de l'Ontario.

**The Chair (Mrs. Linda Jeffrey):** The standing committee on general government is called to order. We meet today for the purpose of clause-by-clause consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act.

Committee, before you have a letter submitted today by OMERS. You also have three new motions—I tell a lie. One is a new version and the other two are additions, one being 15 and the two new ones 73a and 76a. You should have those in front of you. So those are three additional pieces of paper on your desk, along with the clauses you have before you.

We'll now commence clause-by-clause consideration of the bill, beginning with the—

**Mr. Brad Duguid (Scarborough Centre):** On a point of order, Madam Chair: I suppose I have to seek unanimous consent. There are two amendments that have been circulated around, one for subsection 40(1) and the other for subsection 41(1). I'm just seeking unanimous consent that they be included as well. I have talked to the opposition parties. They're really just correcting a drafting error.

**The Chair:** I think we just said we'd include those. I don't think we have any objection to that.

**Mr. Duguid:** That's fine. The only other request I was going to make is that perhaps, given the complexity of the bill, maybe we should have staff up at the table, because there are going to be a lot of questions.

**The Chair:** Sure.

**Mr. Duguid:** Rather than having them come back and forth, we might as well have them here for the whole time.

**The Chair:** It's a little complex.  
Yes, Ms. Horwath.

**Ms. Andrea Horwath (Hamilton East):** Just to clarify then, the amendments we just got on the table right now, my understanding is that they are somewhat housekeeping amendments based on errors in language that might have been found on the government side of the table. I just want to confirm that that's the case.

**The Chair:** I believe so. They're consequential amendments.

So we're going to begin with subsection 1(1), a government motion. Mr. Duguid.

**Mr. Duguid:** I have a motion to move here.

I move that the definition of "OMERS pension plans" in subsection 1(1) of the bill be struck out and the following substituted:

"'OMERS pension plans' means the primary pension plan, any retirement compensation arrangements that provide benefits for members and former members of the OMERS pension plans and such other pension plans as may be established by the sponsors corporation; ('régimes de retraite d'OMERS')."

**The Chair:** Any comments or questions on this section?

**Ms. Horwath:** Can I just get a clarification of exactly why this amendment was necessary?

**Mr. Duguid:** The information I have is that the motion would recognize a retirement compensation arrangement as an OMERS pension plan, provide the sponsors and the administration corporations with a full range of powers for RCAs as they exercise under the bill for other OMERS pension plans, and maintain OMERS current powers with regard to retirement compensation arrangements. I'd be happy to refer it to staff if you want some more details on that.

**Ms. Horwath:** No, I think that'll do it.

**The Chair:** Any other comments or questions on this motion? Seeing none, shall it carry? All those in favour? All those against? That's carried.

Subsection 1(4). Ms. Horwath.

**Ms. Horwath:** I move that subsection 1(4) of the bill be struck out and the following substituted:

"Police and fire sectors

"(4) A reference in this act to persons who are employed in the police and fire sectors is a reference to OMERS pension plan members who are members of a police force as defined in section 2 of the Police Services Act or who are employed as firefighters as defined in subsection 1(1) of the Fire Protection and Prevention Act,

1997, or as paramedics as defined in subsection 1(1) of the Ambulance Act.”

**The Chair:** Any comments or questions on section 1?

**Mr. Duguid:** Just briefly. We support the addition of the paramedics and commend the member for bringing that forward. We do have a motion that would do the same thing. However, the government motion also changes the definition of “police force” to “police officer,” which eliminates the non-uniformed police from consideration for subscribed supplemental benefits. So what we would be doing is voting against this one and we’ll be supporting the government motion, because there’s more to it than that.

**Mr. Ernie Hardeman (Oxford):** Just a clarification of the comments. It’s not to this motion, so we may want to wait till we get to the government motion, but the challenge of making it “police officer” as opposed to “a member of the police force,” taking out civilians: What happens to people who have been police officers and are now on an extended pension and then they go into regular service because they no longer want to do police work? How do we deal with those?

**Mr. Duguid:** Did staff understand that? I think I understand where you’re going on it. Did staff understand that question, or could we rephrase it?

**The Chair:** Could I ask staff to identify themselves for Hansard before they begin?

**Ms. Janet Hope:** Janet Hope. I think I understand the member’s question, but I think the point of the government amendment is to address consistency with the definitions under the federal Income Tax Act. So that’s the issue at question.

**The Chair:** Any more comments or questions on this motion?

**Mr. Hardeman:** Again, I don’t know whether we’re going to deal with the other motion, but the challenge is, at what point does that change? We’ve decided that in this bill we’re not necessarily consistent with the federal guidelines as to what a police officer or a firefighter is and the abilities of the pension plan to cover them. How does that change when—I’m a police officer, I’ve worked 20 years, I’m not yet at retirement and I’m on the enhanced pension. I’m on a supplementary pension and I’ve decided to give up policing and go into civil dispatch, because I’m still with the police force. Can I stay on the full double pension and still get to my early retirement?

**Ms. Hope:** I think the question you’re asking is one for the pension administrator to determine when there are changes in the status of an individual that might affect their eligibility for specific benefits, and not the specifics of this bill.

**Mr. Hardeman:** Maybe, Madam Chair, we can debate it further when we actually see the amendment that’s coming forward. I still have some problems with it.

**The Chair:** Sure. Any more comments? Ms. Horwath.

**Ms. Horwath:** May I just ask for clarification why the motion that I provided doesn’t cover off the issue adequately?

**The Chair:** Does staff want to answer that one? We want to know why the existing motion doesn’t cover off the police, why the definition needs to be changed.

**Ms. Hope:** The definition in the bill, as introduced, is broader in scope and would include a broader group of individuals than those who would be eligible as public safety employees under the federal Income Tax Act.

**Ms. Horwath:** So “members of a police force” is not as broad as saying “employed as police officers as defined in the Police Services Act”?

**Ms. Hope:** It’s actually the reverse. As I understand it, “police force” is broader and would include civilian and non-civilian police, whereas “police officer,” as defined in the amendment, is narrower in scope and would refer specifically to those who would be eligible or would be considered public safety employees under the federal Income Tax Act.

*Interjection.*

**The Chair:** We have a quorum call, so those members who have to leave to make quorum—I guess we can take a five-minute recess. It’s a five-minute bell. We’ll take a recess.

*The committee recessed from 1632 to 1637.*

**The Chair:** We’re back from our recess, and we’re on item number 2, I believe, the New Democratic Party motion. Ms. Horwath, did you have any more comments or questions on the bill, this section?

**Ms. Horwath:** No.

**Mr. Duguid:** Just quickly, there’s a question that Mr. Hardeman had asked, and we’ve got a more detailed answer.

**The Chair:** A better answer?

**Mr. Duguid:** Yes.

**Ms. Hope:** I think the question spoke to an individual whose employment status changes and how that employment status would affect their pension entitlement. We have that situation now. An individual might move, if they’re currently a uniformed police officer, therefore a normal retirement age 60, into a position that is a civilian police position, which would be a normal retirement age 65. So when that situation happens, you don’t lose your pension entitlement that you’ve accrued to that point, but if you move into new employment, then you’re subject to the pension benefits associated with that new position.

In this case, where we’re talking about the definition in the amendment, it would be consistent with the definition that is used for police now in the existing OMERS plan. It would align it with the existing distinction between the NRA 65 and NRA 60 police.

**Mr. Hardeman:** I’m still concerned a little bit about it. I understand that there are different people working in the civilian section, as opposed to in the actual administration of justice section. If there was a supplemental plan, I could understand that the supplemental plan would apply to the police working on the protective side, where there’s a reason to have an early retirement and so forth.

My concern is someone working as a police officer for a period of time and then, for whatever reason, decides



they're not entitled to their retirement yet, but they no longer can or want to work in the enforcement side. They switch over to the other, but they're still in the OMERS pension. When they reach the age of 60 instead of 65, is changing over going to mean that they no longer can be part of the supplemental plan, so they can't retire at 60 if they switched over to the civilian side before 60?

**Ms. Hope:** I think, quite apart from the supplemental plan issue, as it stands now, they would be moving in that scenario from an NRA 60 position to an NRA 65 position. So even in the current world, an individual moving employment—situations as you described—would change categories. This is a question, to some extent, for plan administrators to answer in detail, but if one's employment changes and therefore one is entitled to different pension benefits as a result, then that would have an impact on pension benefits. One doesn't lose the pension that's accrued while in one position if you're transferring within a plan, but subject to the benefits of the new position.

**Mr. Hardeman:** In this case, we're talking about a new plan that presently doesn't exist. So when it comes to the 65 and the benefits accrued, they're the same, whether you're on the one side or the other, because we don't have the supplementary plan.

Now we have a supplementary plan. I'm entitled to the benefits of a supplementary plan, but then, for whatever reason, I decide I can't stay at that position at 58. So I spend two more years working as a civilian because I can no longer do or don't feel I'm capable of doing what I'm entitled to the supplementary for. Now we're saying that because I switched over, I have to work seven more years to get my pension because I'm no longer eligible for the supplementary pension.

**Ms. Hope:** I couldn't speak to exactly what would happen to the individual, because that would be subject to what's in the plan text. The plan text would need to address what happens to individuals who are in an area with a supplemental plan who transfer into another job, whether it's with the same employer or to another employer who doesn't participate in a supplemental plan. So the plan text and the plan administration would need to address the specific details of how that transfer occurred and what pension entitlement followed or did not follow that individual. With that, I think we're getting to a level of detail beyond my knowledge.

**Mr. Hardeman:** I'm concerned about that being in there, that it takes people out of the plan who might not necessarily want to be out of the plan. I can understand when I'm a police officer and I negotiate with another service where I may, in fact, not have as good a pension, but where there are other reasons why I want to transfer. But staying within the service, I think there needs to be something that says that my pension entitlement stays regardless of which chair I'm sitting in for the same employer. I can't believe that we would have a piece of legislation that would say no, that if you take retirement, you could go on sick leave for two years, but if you don't take your retirement and work as a civilian, you now

have to work seven years instead of five to qualify for the same plan that you've been paying for. I have some concerns. If that's why we're doing it, I don't think we should be doing it.

**Ms. Hope:** If I could go back to the rationale for the difference in the definition, I think the rationale is to have a definition which is consistent with the current definition that distinguishes between NRA 60 and NRA 65 police in the current OMERS plan, and which also is consistent with the definitions in federal income tax that distinguish public safety employees who have eligibility for certain higher benefits from others. So it's those issues of consistency.

**Mr. Hardeman:** Just one more question, if I could, going back to the amendment put forward by the New Democratic Party—which is, incidentally, identical to one that our party has put forward: What is it that you believe would happen if we pass that one as opposed to the government one? Who would be negatively impacted? Would the plan be negatively impacted by passing this one without the different wording of it having to be an officer?

**Ms. Hope:** The two different definitions that are provided in the two different amendments would differently scope the group of individuals who would be eligible for accessing supplemental benefits, given other amendments that are proposed. Under the NDP motion, it would be a larger group of individuals caught up in this group who could be eligible to access supplemental benefits. Under the government motion, it is a somewhat smaller group of individuals. It would exclude the civilian police.

**Mr. Jean-Marc Lalonde (Glengarry—Prescott—Russell):** Just for clarification, to follow up on Mr. Hardeman's question: Quite a few times I've seen a police officer who, during his regular duties, gets involved in an accident, and after 15 years of service, he's not able to continue working on the road, let's say, in a cruiser or on the beat. If, after a while, he's assigned as a desk duty officer, will he be able to continue on the same pension entitlement that he had when he was working on the road as an officer?

**Mr. Tom Melville:** It's Tom Melville. I'm a legal counsel with the Ministry of Municipal Affairs and Housing. I believe this answer also relates to Mr. Hardeman's question. It's a job classification question, really. If the police officer changes the job classification from police officer to something else—say, a civilian desk job of some kind—there are rules in place today that deal with that conversion.

By the way, this act doesn't really change those rules. Today, a police officer is in a category called normal retirement age 60. They're entitled to an earlier retirement than people with a later retirement age of 65. That's not been changed. If that police officer changes their job category to something that's not a police officer, then there are conversion rules that apply in terms of how their pension would be calculated and when they would be entitled to begin drawing the pension. Those rules are not affected by the bill.



**Mr. Lalonde:** Thank you, Madam Chair.

**The Chair:** Any more comments or questions on this amendment?

**Mr. Hardeman:** In order for me to be able to decide which is the good amendment and which one isn't, I need the information as to what it says as far as a definition of being a firefighter under the firefighters act or under the Police Services Act, because I have a problem with the fact that the amendments that are being put forward, the New Democratic one and the Conservative one, are strictly based on adding paramedics, under the paramedics act, under the bill that was introduced and that we had the public hearings on.

From what I'm hearing in the explanation of why we should support the third amendment, which is the government amendment, it's that we're going to exclude certain people from this supplementary benefit package. I'd like to know who those certain people are. Unless I can see the definition of what is a firefighter under the Fire Protection and Prevention Act, 1997, subsection 1(1), as to who that is then, I don't know how we can support or not support any one of these three amendments, because I think that the third amendment actually changes who is going to be eligible for supplementary benefits, and I'd like to know who that is. Madam Chair, I'd like to see if we could have someone get us that before we vote on these amendments.

**The Chair:** Is that a possibility? Can staff do that?

**Ms. Hope:** The definitions from the acts?

**The Chair:** Yes.

**Ms. Hope:** We'll have to follow up, but we can—

**Ms. Catherine Macnaughton:** We're going to see if we can access through Hansard to get to the e-law system.

**Mr. Duguid:** Perhaps we could stand this particular item down and then come back to it. Would that be acceptable to members?

**The Chair:** Is that OK? We'll stand section 1 down until we've dealt with that, and move to section 2. We have a government motion.

**Mr. Duguid:** I move that section 2 of the bill be amended by striking "and any retirement compensation arrangements that provide benefits for members and former members of the OMERS pension plans" at the end.

What does that mean? It amends the bill to remove reference to retirement compensation arrangements from the section. I have been told that because the definition of the OMERS pension plans is earlier in the bill, the reference here is redundant. If any further explanation is required or if there are any questions on that—it's pretty technical—certainly we could refer them to staff.

**The Chair:** Any comments or questions?

**Mr. Hardeman:** I would like the staff to explain it. So far, I'm right out in the dark.

**Ms. Hope:** Let me take a stab at it, then. The first government motion proposes to change the definition. So previously, the bill as introduced made reference to the OMERS pension plan and to the retirement compensation

arrangements as an extra—or distinguished between them. In fact, retirement compensation arrangements are part of the current plan that OMERS administers. So the definition at the front is being amended to say that whenever we talk about the OMERS pension plan, we're also talking about any retirement compensation arrangements that OMERS administers. If the members do indeed change that definition, then the change needs to be made here, just to be consistent. If the definition up front is changed, then any time the OMERS pension plan is referenced, it would also automatically include a reference to retirement compensation arrangements.

**The Chair:** Any other comments or questions? Mr. Hardeman, you had another question?

**Mr. Hardeman:** It's still the same one.

**The Chair:** OK.

**Mr. Lou Rinaldi (Northumberland):** He wasn't here when—

**The Chair:** Sorry? Mr. Rinaldi, what did you—

**Mr. Rinaldi:** Just for clarification, you weren't here when the first motion was passed, and that's really what it refers to.

1650

**Mr. Hardeman:** Then I guess somebody could explain that to me.

**The Chair:** Staff, can you answer that question?

**Mr. Melville:** Throughout the bill there are motions dealing with references to retirement compensation arrangements. Retirement compensation arrangements aren't part of the pension plan per se but they're arrangements made so that people who make money over the maximum level for pensions under the Income Tax Act can have an additional amount of pension that would reflect their higher level of earnings after they retire. So because they made more money, they get a larger pension. Retirement compensation is just a technical name for that particular arrangement, so that people who make more money than the pension maximum under the Income Tax Act can have their pension topped up to an additional level.

The amendments in the bill reflect, for the most part, what OMERS is doing now, which is administering retirement compensation arrangements for pension plan members who happen to make money over that limit. These are really just technical amendments to make it possible for OMERS to continue doing what it's doing now.

**Mr. Hardeman:** Thank you.

**The Chair:** Any more comments or questions? Seeing none, shall this amendment carry? All those in favour? All those opposed? That's carried.

Shall section 2, as amended, carry? All those in favour? All those opposed? That's carried.

Section 3, page 5, a government motion.

**Mr. Duguid:** It's another motion similar to the other one.

I move that section 3 of the bill be amended by adding the following subsection:

"Retirement compensation arrangements



“(4) Any retirement compensation arrangements that provide benefits for members and former benefits of the OMERS pension plans that are in effect on the day the Ontario Municipal Employees Retirement System Act is repealed are continued and have the terms and conditions that were in effect immediately before that act was repealed.”

OMERS has sought this assurance. It ensures that the plan operations currently in place would continue to be in place after Bill 206 is passed.

**The Chair:** Any comments or questions?

*Interjection.*

**The Chair:** Mr. Duguid, could you read the motion again—we think you may have misspoken—just so we have it accurately?

**Mr. Duguid:** I move that section 3 of the bill be amended by adding the following subsection:

“Retirement compensation arrangements

“(4) Any retirement compensation arrangements that provide benefits for members and former members of the OMERS pension plans that are in effect on the day the Ontario Municipal Employees Retirement System Act is repealed are continued and have the terms and conditions that were in effect immediately before that act was repealed.”

**The Chair:** Thank you. Any comments or questions?

**Ms. Horwath:** Can I just clarify that this is a transitional clause to make sure that nothing changes, that nothing is omitted from the previous plans?

**Mr. Melville:** Yes, it has the same purpose as the previous motion. There are a number of them throughout the bill. Again, they’re to continue the existing retirement compensation arrangements.

**The Chair:** Any other comments or questions? Shall this amendment carry?

**Ms. Horwath:** I do have one more question; I’m sorry.

In the other motions, were we not striking out the part that talks about any compensation arrangements that provide benefits for members? Weren’t we striking those out? And now we’re referring to them. Can you explain that to me?

**Mr. Melville:** I guess that’s a drafting issue. We tried to more clearly state in the bill what the existing arrangements were. We had heard from some stakeholders that it could be better arranged, and this is really just reflecting—

**Ms. Horwath:** So this is where it makes sense to have them referred to, as opposed to where they were in the previous two clauses?

**Mr. Melville:** Yes.

**Mr. Hardeman:** Just to be perfectly clear, then, this is just a catch-all motion that anything that was being paid out now will be paid out when the plan is enacted?

**Mr. Melville:** Yes; it’s to assist with the continuance of existing arrangements.

**The Chair:** Any more comments or questions? Shall the amendment carry? All those in favour? All those opposed? That’s carried.

Shall section 3, as amended, carry? All those in favour? All those opposed? That’s carried.

Section 4.

**Ms. Horwath:** I move that section 4 of the bill be amended by adding the following subsections:

“Restriction on use of primary pension plan assets

“(2) No assets of the primary pension plan shall be used for the purposes of paying any optional benefit under a supplemental plan or funding the payment of any other liability of a supplemental plan.

“Exception

“(3) In the event that any supplemental plan, or any provision of any supplemental plan, increases the actuarial liabilities of the primary pension plan, the supplemental plan shall transfer assets to the primary pension plan sufficient to fund the increased liability.”

**The Chair:** Any comments or questions?

**Mr. Duguid:** I think we understand what this motion is trying to get at. It’s trying to ensure that members of the plan are protected from rebound costs. The difficulty that we have with it is that our legal counsel has advised us that it’s not legally permitted to transfer assets, as this is proposing. Perhaps I could just get clarification of that from staff, so that members can be made aware.

**Mr. Melville:** The purpose of a rebound provision, in case anybody’s not familiar with it, is that if the behaviour of plan members changes because of introduction of a new benefit, that behaviour could affect other members of the plan or members, in the case of the supplementary plan, of the primary plan. A rebound provision would be an attempt to make sure that the changed behaviour of the members who were taking advantage of the supplementary benefits in the supplemental plan did not financially affect the main plan or the primary plan in a negative way. That’s the purpose of the rebound provision.

Under the Pension Benefits Act and, generally speaking, assets of a pension plan, once contributions are paid in, are locked in, then they can only be taken out in special circumstances. The government’s position is that it’s better to address the rebound provisions by requiring that contributions, when paid by people who would be taking advantage of the supplemental benefits, be directed to the extent necessary into the primary plan to pay for those rebound costs.

**Mr. Hardeman:** I understand that the bill already prohibits the supplemental plans being funded by the primary plan. The actuary who decides the cost, the premiums that need to be put in to fund the supplemental plan, since it’s a defined benefit plan—if that is not covered off, somebody made a mistake. Doesn’t this then prevent them from having to pay it? There’s some discussion out there, some train of thought that in fact, at some point in time, it will automatically happen: The supplemental plan will not have enough contributions to keep it going or to pay it out in full. Do we not need something to prevent the main plan from paying for that?

**Mr. Melville:** Again, there will be a government motion introduced later in the bill that addresses the issue



of rebound costs, which I think is what you're talking about: the concern that the impact on the primary plan, the main plan, of the supplemental plans would not otherwise be compensated for. That's in section 14 of the bill.

**Ms. Horwath:** Two things: The first is that people will recall that some stakeholders were concerned that the language that existed in the first draft of the bill did not adequately address their concern about rebound costs. I think that's important.

Secondly, I think it's important to recognize that other stakeholders who are interested in the supplemental plans agreed in principle that those plans were not going to, in any way, rebound costs into the primary plan. So that's the first thing, just acknowledging the fact that there is no controversy over the extent to which supplemental plans would not be subsidized by the primary plan.

Further to that, it's all kind of one plan; it's the OMERS plan. Supplementals are certainly part of that, but notwithstanding, it is all the same plan, so perhaps it could be argued that OMERS as a pension plan, with supplementals, is still the same plan. Further to that, though, I'm wondering whether it might be appropriate to put a clause such as this in, because this legislation, if that clause, as I put it, is in, then allows for the kind of consideration to take place that was just discussed by staff. From my perspective, the whole point of putting it in here is to make sure that these issues can be addressed in the way that we draft the legislation.

1700

**The Chair:** Any other comments or questions? Seeing none, shall the amendment carry? All those in favour? All those opposed? That's lost.

Shall section 4 carry? All those in favour? All those opposed? That's carried.

Government motion for section 5.

**Mr. Duguid:** I move that subsection 5(1) of the bill be amended by adding the following paragraphs:

"9. The sponsors corporation.

"10. The administration corporation."

What this does is permit OMERS staff and staff of the administration and sponsors corporations to participate in the OMERS pension plan itself. This is a request from OMERS as well.

**The Chair:** Any comments or comments?

**Mr. Hardeman:** The question of adding two more to it: Are they presently in the plan? Are they presently covered by OMERS insurance?

**Ms. Hope:** The current staff of OMERS are indeed members of the OMERS pension plan. They will presumably become staff of the administration corporation when this transfer takes place. So it would ensure that they and any potential future employees of the sponsors corporation are able to continue to enjoy their pension benefits.

**The Chair:** Any further comments or questions? Seeing none, shall the amendment carry? All those in favour? All those opposed? That's carried.

Shall section 5, as amended, carry? All those in favour? All those opposed? That's carried.

Shall section 6 carry? All those in favour? All those opposed? That's carried.

Shall section 7 carry? All those in favour? All those opposed? That's carried.

Shall section 8 carry? All those in favour? All those opposed? That's carried.

Section 9.

**Mr. Duguid:** The government side has a bit of a problem with section 9, and I'll be recommending committee members to vote in opposition to this. We don't have any particular position with regard to the issue of a defined plan, but some providers in the future may decide to go in a different direction. We feel that if we're giving autonomy to the sponsors corporation, they should have the autonomy to be able to do that, should they so choose. They may or may not. Who knows what issues they may have to deal with 10 or 20 years down the road? So we'll be voting in opposition to this particular section.

**Ms. Horwath:** I would submit that the government got it right the first time by including defined benefit as the way to go with this plan. I think you will recall that I asked many plan member stakeholders who were at the table, including police and fire, CUPE, CAW and every single plan member stakeholder group that arrived at this table and spoke to this committee, that specific question around defined benefit versus defined contribution, and every single one of them, in my recollection—and I stand to be corrected—indicated a preference for maintaining a defined benefit status within this OMERS plan. I find it shocking, frankly, that this is on the government's agenda; that, instead of putting some kind of formal notice to stakeholders that this was going to happen through an amendment, they actually just verbally indicate that they're going to be voting against it. I think it's going to be a surprise to many plan member stakeholders that the government is in fact prepared to allow the defined benefit plan to slip into a defined contribution plan at some time in the future and to enshrine that in legislation.

**Mr. Hardeman:** I agree with Ms. Horwath's comments. I find it curious, if not surprising, that all of a sudden we would make such a major change with what, in my opinion, would be a piece of paper that's out of order for the government side to come in with a notice that says that they're recommending their members vote against it. Really, in the amendments coming in my amendment package, it's not appropriate to send in an amendment in a committee hearing that says how I should vote—or how the government members should vote, for that matter.

I think that the issue of the section is a much bigger issue than just, "There it was and there it isn't." We heard quite a few comments, and I expect some of them were both ways, as to whether it should be a defined benefit or a defined contribution plan. I think to just change it from one to the other—I guess I need a little bit more explanation as to why, recognizing that everything else in the legislation is written and is predicated on it being a



defined benefit plan, why we would not want to leave that in there.

**Mr. Duguid:** In response to that, it is a defined benefit plan; there's no question about that. Why we're recommending our members to oppose this clause is to allow OMERS flexibility for future decisions should, sometime in the next number of decades—this plan is going to be around a long time—they decide to go in a different direction. We're not presupposing that they do that or recommending that they do that. They may never want to go in that direction. But at some point in time, who knows? They may decide that they want to do that, and that should be left up to the capable people appointed to administer this plan.

With regard to the procedure before us, that's the only procedure available to us. I know your party has utilized that as well when you recommend to vote against a clause. You can't put in an amendment to withdraw a clause; the only way you can do it is to vote against it, which is following procedure.

**Mr. Hardeman:** I would suggest that if you check the record, you'll find that the table has, many times, ruled that type of amendment out of order. You can tell your members how to vote but you're not to tell the opposition that we should vote against it, because it's the government decision to do that.

With that, Madam Chair, seeing such major changes being made, I would ask for a recorded vote on each item as it's coming forward.

**The Chair:** All items, or just this one?

**Mr. Hardeman:** All of them.

**The Chair:** OK.

**Ms. Horwath:** Two things: First of all, on the procedural issue, if that's the normal way of doing things and I was speaking out of turn, I certainly apologize for that. It's my first clause-by-clause, so there you go.

But having said that, I do believe that there's still a problem with that particular direction that the government is taking by asking its members, who have a majority on this committee and so they well will reign, to take the slippery slope of allowing for a defined contribution plan to seep into the OMERS plan.

For clarification, Madam Chair, how long has OMERS been in existence?

**The Chair:** I would ask staff to answer that question.

**Ms. Hope:** I believe the early 1960s, but I don't have the specific year.

**Ms. Horwath:** So in 40 years it hasn't needed to go to defined contribution, I would guess. Maybe I'm wrong. Hopefully, for the next 40 years it won't need to go to defined contribution, either.

**The Chair:** Mr. Hardeman, did you want the clerk to comment on whether this is out of order or not, on your comment?

**Mr. Hardeman:** It doesn't make any difference, Madam Chair. I believe that it's not an amendment when it comes in my amendment packages.

**The Clerk of the Committee (Ms. Tonia Grannum):** No, it's not an amendment, and that's why

it's not numbered, either, but I left it in because that's how I received it. But it isn't a motion, and you're right that you just vote against the section.

**The Chair:** Any more comments or questions? Shall section 9 carry?

**Ayes**

Hardeman, Horwath.

**Nays**

Dhillon, Duguid, Lalonde, Matthews, Rinaldi.

**The Chair:** That's lost.

Section 10.

**Mr. Duguid:** I move that subsection 10(2) of the bill be struck out.

**Mr. Hardeman:** If I could have an explanation? Why is it being struck out?

**Mr. Duguid:** I'm just checking into subsection 10(2). This motion would remove the requirement for the sponsors corporation to consider supplemental benefits. The government recommendation would be to have the sponsors corporation put in place supplemental benefits. It would be redundant, therefore, to ask for it to consider supplementary benefits. We're going to be putting it into the bill as we're subscribing it, so it would be redundant for us now to ask that they consider it.

**Mr. Hardeman:** We've already put it in the bill?

**Mr. Duguid:** I don't think we've gotten to that motion yet. We will, though. It's the government's intention to do that in a subsequent motion we're going to see.

1710

**Ms. Horwath:** Just to clarify, then, by supporting this we're really not doing anything. Really, the substantive piece comes later on when, in effect, the government puts the other motion?

**The Chair:** I believe so, yes.

**Mr. Hardeman:** Just for the record, the issue from all the municipal presenters who spoke to the committee really was that, although the board could consider supplementary plans—it said “shall consider”—there was concern that it wouldn't happen. The municipalities immediately said that it would happen because an arbitrator would force it to happen. The minister said that none of this would happen if it wasn't agreed on by both parties, but what this is really going to do, in conjunction with your next amendment, is make it already happen. Is that right?

**Mr. Duguid:** No. What this means is that the OMERS corporation will have to have this as part of their package in terms of their plan. It will still be up to the parties, the municipalities and other parties, to negotiate whether they can have it or not, and that will depend on their collective bargaining process.

**Mr. Hardeman:** The original bill—what we're taking out here now—said that OMERS, the top one of the two,

had to consider it, shall consider it, but not necessarily implement.

**Mr. Duguid:** That's correct.

**Mr. Hardeman:** This says that as a given, the OMERS pension plan will include supplementary programs for those three categories.

**Mr. Duguid:** Yes, that will then be available to its members to negotiate with municipalities. So in essence, it's stronger.

**Mr. Hardeman:** When municipalities were concerned about the arbitrator being allowed to make that decision, we solved that problem by making the decision for the arbitrators and for the municipalities. Is that right?

**Mr. Duguid:** No, because the decision for the arbitrator would be a decision based on the collective bargaining process between the employees and the employers of the various municipalities.

**Mr. Hardeman:** Presently, the section we're discussing now to delete is: "The sponsors corporation shall consider providing optional increases in pension benefits for members of the primary pension plan who are employed in the police and fire sectors." If they couldn't come to an agreement, an arbitrator would make their decision.

**Mr. Duguid:** I see what you're saying.

**Mr. Hardeman:** Again, the next step was that the employers and the employees could discuss and decide whether they would actually use it, but this here gave the decision of whether the plan itself was going to have supplementary benefits to the sponsoring board. We're taking that away, and we're going to say, "The sponsoring board shall have available supplementary benefit packages"?

**Mr. Duguid:** Yes, we are prescribing that they have that available.

**Mr. Hardeman:** You're prescribing the benefits as opposed to that being a decision of the sponsoring body?

**Mr. Duguid:** That's right.

**Mr. Hardeman:** OK.

**The Chair:** Any more comments or questions?

**Ms. Horwath:** Can I just find out which further amendment this one refers to? This is a technical bill to start with, so when we're dealing with amendments that refer to further amendments along in the package, it might be useful to just do them together. I don't know whether that's the case, but I find it really challenging.

**Ms. Hope:** I believe it's the very next motion. The government motion is the one that would speak to prescribing, so motion number 10. If motion number 10 were adopted, that would make what is in the bill in subsection 10(2) redundant.

I'm sorry, motion 9 is the section 10. I beg your pardon.

**Ms. Horwath:** Oh, I see. OK.

**The Chair:** Any more comments or questions? Seeing none, shall the amendment carry? Mr. Hardeman, do you want everything recorded from now on? OK. A recorded vote has been asked for.

## Ayes

Dhillon, Duguid, Horwath, Lalonde, Matthews, Rinaldi.

## Nays

Hardeman.

**The Chair:** That's carried.

Shall section 10, as amended, carry? A recorded vote has been requested.

## Ayes

Dhillon, Duguid, Horwath, Lalonde, Matthews, Rinaldi.

## Nays

Hardeman.

**The Chair:** That's carried.

Section 10.1.

**Mr. Duguid:** I move that the bill be amended by adding the following section:

"Optional increases, police and fire sectors

"10.1(1) The sponsors corporation shall amend the OMERS pension plans to provide optional increases in benefits for members of the primary plan who are employed in the police and fire sectors.

"Same

"(2) The amendment required by this section shall be made within 24 months after the day this section comes into force.

"Method of calculating benefits

"(3) A supplemental plan established under this section shall make provision for all of the following:

"1. An annual benefit accrual rate that is 2.33% for members under the supplemental plan.

"2. The payment of pension benefits to members of the supplemental plan in which the annual amount of pension is not reduced because a member retires before the member's normal retirement age of 65 years if, at the date of retirement, the sum of the member's age, counted in full years and months, plus credited service and eligible service, counted in full years and months, equals at least 85 years.

"3. The pension benefits payable to members under circumstances described in paragraph 2 shall begin to be paid not more than 10 years before the member's normal retirement age.

"4. The payment of pension benefits to members of the supplemental plan in which the annual amount of pension is not reduced because a member retires before the member's normal retirement age of 60 years if, at the date of retirement, the sum of the member's age, counted in full years and months, plus credited service and eligible service, counted in full years and months, equals at least 80 years.



"5. The pension benefit payable to members under circumstances described in paragraph 4 shall begin to be paid not more than 10 years before the member's normal retirement age.

"6. The pension benefit payable to members of the supplemental plan is calculated based on the average annual earnings of the members over a period of credited service of three years, but the average may be less than three years for employees with credited service of less than three years.

"7. The pension benefit payable to members of the supplemental plan is calculated based on the average annual earnings of the members over a period of credited service of four years, but the average may be less than four years for employees with credited service of less than four years.

"8. The option for a member to pay all of the contributions to the supplemental plan for a benefit described in paragraph 1, 2, 4, 6 or 7 in respect of the member's pensionable service before the day the employer decides to provide the supplemental plan.

"Consent of employer

"(4) A supplemental plan established under this section shall not authorize a contribution in respect of or provide for a type of benefit for any members who are employees of an employer unless the employer consents to provide that type of benefit to the members.

"Same

"(5) In a consent under subsection (4), an employer may only consent to provide,

"(a) a benefit described in paragraph 1 of subsection (3);

"(b) the benefits described in paragraphs 2 and 4 of subsection (3);

"(c) a benefit described in paragraph 6 of subsection (3); or

"(d) a benefit described in paragraph 7 of subsection (3).

"Same

"(6) An employer may subsequently consent to provide an additional benefit listed in any of clauses (5)(a) to (d) that the employer has not previously consented to provide."

**Ms. Horwath:** I am going to support this because I believe it to be an appropriate thing to do. However, I have to say that I'm extremely disappointed that the government decided to undertake this initiative and yet ignored a whole other group of plan members who were looking for some of the restrictions to be removed on their ability to improve their plans.

Although I do support what fire and police were asking for in these amendments being enshrined in the legislation, I was dumbstruck with the government decision, notwithstanding the presentations by so many of those plan members who came forward and said that not only is this not equitable, but some of the lowest income earners who are covered by this plan are not going to be able to see improvements to their pensions over time. It's appropriate that this would be done, but

it's totally inappropriate that, on the other hand, those other plan members were not given one iota of consideration in regard to the removal of their cap.

Again, I'm happy that this is here but I'm extremely unhappy that the other piece was not undertaken by the government. I'll be making some further comments about that when the time comes.

**1720**

**Mr. Hardeman:** I have a question for the parliamentary assistant. There's nothing mentioned here about the arbitration process. When the contract goes to arbitration, will the arbitrator be allowed to issue changes in the pension plan as part of the settlement? Here it says that it must be agreed upon by the employer.

**The Chair:** Mr. Duguid, do you want to pass it on to staff?

**Mr. Duguid:** Yes, I'm going to pass that on to staff, for sure.

**Ms. Hope:** The impact of this is that it requires the sponsors corporation to set up a supplemental plan and to have the specific benefits available within that supplemental plan. It is then up to local employers and employees to decide if they wish to access a benefit under that supplemental plan.

I think your question goes to, what if that decision process goes to local arbitration? The impact would be that an arbitrator could conceivably award one of the benefits in the supplemental plan as part of an arbitration award.

**Mr. Melville:** That's not in the bill, though.

**Ms. Hope:** No, the bill doesn't specifically address that local arbitration process, but the language of this section would permit that. I think you were referencing particularly the employer consents. The employer consent in the case of collective bargaining that goes to arbitration would be that the employer is bound by the arbitration decision, if that's the way the decision process is reached in that particular circumstance.

**Mr. Hardeman:** Your suggestion here is that if the next contract of our local police services goes to arbitration, the arbitrator could guarantee a supplemental pension plan as part of the—

**Ms. Hope:** If part of what went to the arbitrator was a desire to access one of these benefits, the arbitrator could conceivably award one of these benefits, but subsection (4) does limit the decision, if that comes by an arbitration award, to one of these benefits at a time. So an arbitrator would not be permitted to award multiple benefits in the supplemental plan.

**Mr. Hardeman:** My local police services have, at this point, decided not to deal with the supplemental plan, and their contract goes to arbitration because my local policemen do want the supplemental plan. You're saying that the arbitrator could award it and force the municipality into the supplementary plan, but only one piece at a time; is that it?

**Ms. Hope:** Yes.

**The Chair:** Any other comments or questions? Seeing none, shall the amendment carry?

**Ayes**

Dhillon, Duguid, Horwath, Lalonde, Matthews, Rinaldi.

**Nays**

Hardeman.

**The Chair:** That's carried.

Section 11. Mr. Duguid, are you going to be doing this?

**Mr. Duguid:** Yes, I'll do this one as well. I'm eventually going to start sharing this as my voice gives out.

I move that section 11 of the bill be amended by adding the following subsections:

"Exception

"(2) Despite subsection (1), the sponsors corporation may amend any of the OMERS pension plans to authorize unequal amounts of contributions to be made by employers and employees for one or more years if,

"(a) after the amendment, the contribution rates for employers and employees for each class of benefit under the OMERS pension plans are equal; and

(b) the sponsors corporation is of the opinion that it is fair and reasonable to make the amendment.

"Application

"(3) Subsection (1) does not apply in respect of contributions payable to a pension plan for a year if,

"(a) the amount of the contributions are in accordance with the terms and conditions of the pension plan as it was governed by the Ontario Municipal Employees Retirement System Act immediately before that act was repealed, and those terms and conditions have not been amended by the sponsors corporation; or

"(b) the only reason that the total amount of the contributions payable by the employer does not equal the total amount of the contributions payable by the employer's employees is because one or more employees made contributions to a supplemental plan in respect of pensionable service described in paragraph 8 of subsection 10.1(3)."

**Ms. Horwath:** Can I get an explanation of exactly what this is about and perhaps an example of when it will be necessary to use it?

**Mr. Duguid:** Sure. This is a request from OMERS to have more flexibility in arrangements for paying for benefits. It would continue their current practice.

It would be used where a firefighter, for instance, may want to buy back service, but if it's not available to him to do that jointly with the employer, he may want to pay for it on his own. That's my understanding of it. Is there anything further that needs to be clarified by staff?

**Ms. Hope:** Another example would be, as is currently the practice, if someone takes a leave of absence for whatever reason and their service is broken and there isn't pension contribution for that period of time—maternity leave, disability leave, what have you—and the

individual then wishes to buy back the pension credit for that period of time at their full cost.

Also, as Mr. Duguid points out, with respect to the previous section where there are some specific circumstances, there could be an opportunity for the employee to buy back supplemental benefits at their full cost.

**Ms. Horwath:** But this section does not only refer to the police, fire or ambulance?

**Ms. Hope:** Correct. It refers to—

**Ms. Horwath:** To all members of the plan.

**Mr. Lalonde:** When we say the employees will be able to buy back this time by paying full cost, will that be the employer's cost and the employee's cost?

**Ms. Hope:** That is the kind of circumstance this refers to, that in certain circumstances the employee would pay both the employer and employee share, but not always. The general principle in section 11 that is in the bill now is the 50-50 cost sharing. This amendment would provide for those circumstances where it makes sense for one or the other party to pay the full cost because of the specific circumstances.

**Mr. Lalonde:** Thank you.

**The Chair:** Any further comments, questions? Shall this amendment carry? A recorded vote has been requested.

**Ayes**

Duguid, Hardeman, Horwath, Lalonde, Matthews, Rinaldi.

**The Chair:** Unanimous.

Shall section 11, as amended, carry? A recorded vote has been requested.

**Ayes**

Duguid, Horwath, Lalonde, Matthews, Rinaldi.

**Nays**

Hardeman.

**The Chair:** That's carried.

Section 12.

**Ms. Horwath:** This is the very situation that I was talking about earlier in regard to the supplemental plans of police, fire and ambulance workers being enshrined in the legislation as they requested. Section 12 probably would have been the section where the government could have addressed the other plan members capped in regard to what they're allowed in their average annual earnings.

It's interesting, because I received a piece of correspondence from CUPE, as a matter of fact, specifically addressing their disappointment with this piece of their request being ignored by the government. You'll recall when they were at the table, particularly some of the locals that came a little bit later on in the public hearings process. I think they really made a strong case about the



extent to which the workers some of those locals represented were very low-paid workers, were not the top of the rung in terms of wage scale, and could be considered to be fairly low-income. Should they retire, they would likely, in many cases, be living under the poverty line unless there is an opportunity for them to make improvements to their pension.

I find it astounding that the government didn't bother to take that into consideration and didn't take the opportunity to address those concerns.

**The Chair:** Ms. Horwath, could I interrupt you just for a moment? To get this on the record, could you read it in first?

**Ms. Horwath:** Oh, I have to read it in first. OK.

**The Chair:** Please, just so we get it in the right order.

**Ms. Horwath:** So what I'm doing is I'm recommending that people around the table vote against section 12 of the bill.

**The Chair:** You have to read it in.

**Ms. Horwath:** Read what in exactly?

**The Chair:** Page 11.

**Ms. Horwath:** I move that paragraph 2 of subsection 12(1) of the bill be struck out—is that the one we're talking about?—and that we vote against section 12 altogether. Is that the appropriate procedure?

**The Chair:** If you want to continue talking about it, you can.

**Ms. Horwath:** I can go back to my rant?

**The Chair:** Yes, you can go back to your rant. But you have to get it on the record to begin with; then we know what you're talking about.

1730

**Ms. Horwath:** Just to finish off, I think that a very appropriate description of the workers who tend to be in those job classes that were described by some of those locals—it's important to note that they particularly talked about women workers, they particularly talked about immigrant workers and yet the government sees fit not to address that concern in the bill. I have to say that not only am I disappointed that the government decided not to heed that call of fairness and equity for all of the plan members, but seems to have totally ignored the issues that were raised around workers who are not going to now be able to bargain improvements in their pension plans and will unfortunately continue to be ranked among the poorer senior citizens in our communities upon retirement.

**Mr. Hardeman:** I'm just a little concerned here. I don't understand the explanation and reading the section, the contributions to the Canada pension plan. I have concern with a lot of the things we heard when the people made presentations, particularly CUPE with primarily female workers, and the maximum allowable was 1.4% as opposed to everyone else. Is that this section?

**Ms. Horwath:** Yes. Paragraph 2 speaks to 0.6% of the lesser of such average annual earnings. Because it's 0.6% less than the 2% that's allowed—do you mind if I answer?

**The Chair:** I want to just clarify. I think originally you were talking about striking out the whole section, but actually what you're talking about is subsection 12(1).

**Ms. Horwath:** That's what I was doing initially. I was talking about that. Then I was referred by you to go to this.

**The Chair:** You have to do them in order, but you were speaking to two definitions that might clarify where the confusion occurred. So if you're dealing with one item at a time—

**Mr. Hardeman:** I don't—

**The Chair:** You can continue the questions, but I'm just trying to clarify what—

**Mr. Hardeman:** Ms. Horwath, we are speaking about paragraph 12(1)2, which is the 1.4%.

**The Chair:** Yes.

**Mr. Hardeman:** I guess I could ask the parliamentary assistant about the rationale behind restricting the top pensionable earnings or the pension to be available at 0.6% less than the allowable amount. Is there a rationale for capping it there as opposed to letting the sponsoring board, or whoever, make that decision as to where they think the pension should be?

**The Chair:** Mr. Duguid, do you want to answer that question or do you want to give that to staff?

**Mr. Duguid:** I'll give that to staff.

**Ms. Hope:** The provision in section 12, which includes the paragraph 2 in question: These are provisions that are presently in the Municipal Act, 2001, and they're commonly referred to as the cap on employer contributions. So this section in essence transfers that employer cap on contributions into this bill. It does set a maximum, and part of that formula is the CPP offset, so it provides a cap, as it were, on some of the benefit elements that are possible through the plan.

**Mr. Hardeman:** I guess maybe it's a political question rather than a staff question. I understand where it's coming from and I understand what it does. In principle, we're looking at changing the allotment or the threshold for the supplemental plans to be considerably higher than what they're presently allowed, yet we're being insistent that this group of people will stick with the old law, which is 0.6% less than the allowable 2%.

**Ms. Hope:** This provision, as it stands in the bill, would maintain that cap on all of the plans. The motion in question is to remove this one element for all plans. The government does have a subsequent motion that proposes that this entire formula, which is referred to as the employer cap, would apply only to the base pension plans. Either the supplemental plan that is being prescribed in the previous amendment or any other future supplemental plans that could be set up in future for other employees would be exempt from the cap, but that's in a further motion.

**The Chair:** Any further comments or questions?

**Mr. Hardeman:** Again, I want to go back to the political side of it, because I find it very curious that we would decide that the plan should be bound by not allowing further negotiations for better pensions for this



group of people, which, when we get the supplemental plan, is going to be the major part of the plan, but also the lower end of the plan—why we decided that that's as high as they can go when everybody else, according to pension law, can go up to the 2%.

**Mr. Duguid:** It's really a case of maintaining what's there now. It's a case of trying to find some balance as well, because you've heard from a number of the employers who are expressing concern, and who have expressed concern even as far as the supplemental benefits that we're looking at and the committee's looking at right now. It's a case of trying to find balance and to ensure that there are protections for all stakeholders as we move forward with this. That's really why we wanted to stick with the current arrangements.

**Mr. Hardeman:** I guess my real concern is that, of all the employers we heard from, no one presented a case where they were worried about having to negotiate this plan and then having the labour beat up on them because they were giving them a better benefit package than they wanted to. The concern of all the presenters was those areas where it's arbitrated, where they're no longer a part of the decision-making. That isn't this group. This group of people, every one of them, is going to be negotiated. I don't think the employers have told us that that's where their concern was. They told us that they were concerned about arbitrators making arbitrary decisions to get the emergency workers a pension plan that they thought they couldn't afford. With this one here, that's not the case at all. It's going to be the lower-paid people who are being restricted. They can't negotiate even a better pension plan.

**Ms. Horwath:** Thank you to the clerk for showing me the error of my ways in terms of jumping to the section as a whole as opposed to just dealing with the amendment first. I appreciate that.

I'd have to say I'm pretty concerned that the government is prepared to balance the plan on the backs of the lowest-paid workers. That is really a frightening thought, and I'm quite surprised that government members are willing to admit publicly that the lowest-paid workers are going to be the ones taking the brunt of the balancing act the government's trying to walk on this particular bill.

Again, I stand by this section needing to be struck. If it isn't, then we'll deal with the section as a whole.

**Mr. Duguid:** That's really a misrepresentation of what we're doing and what this amendment is about. What we're talking about here is giving supplemental benefits to emergency workers because of the uniqueness of their professions and the fact that they do generally retire at an earlier age. That's what this is all about. Not all workers are in that category, and that's why we're here today, for the most part, and that's why we're prescribing those benefits, because we believe the work that the firefighters and police and, frankly, our EMS workers do is different, and that they do require unique treatment when it comes to this.

**Ms. Horwath:** Just for the record, it's important to note that I believe all the members of this committee supported the piece of the government's motion around making sure that the fire and police workers had their supplementals enshrined in this legislation. This particular section actually refers to the other requests from the other workers, who wanted to see the 1.4% cap removed. To characterize the striking of paragraph 12(1)2, as anything but the request to make sure that there's some equity and some recognition of the request that came from those other plan members is inappropriate.

**The Chair:** Mr. Hardeman, did you have your hand up? You're OK? All right. Any comments or questions on this amendment? A recorded vote has been requested.

### Ayes

Hardeman, Horwath.

### Nays

Dhillon, Duguid, Lalonde, Matthews, Rinaldi.

**The Chair:** That's lost.

Government motion, page 12. Mr. Duguid, are you going to read this one, or are you passing them on?

**Mr. Hardeman:** I'm sorry, what is that we're reading?

**The Chair:** Page 12. It's the government motion.  
1740

**Mr. Duguid:** Mr. Lalonde.

**Mr. Lalonde:** I move that subsection 12(2) of the bill be struck out and the following substituted:

"Exceptions

"(2) Despite subsection (1), a municipality or local board is not prohibited from making a contribution,

"(a) if the employee retires having less than 10 years of pensionable service under the OMERS pension plans;

"(b) if the contribution is made for the purpose of providing an inflation adjustment to pension benefits under the OMERS pension plans; or

"(c) if the contribution is made for the purpose of providing an optional pension benefit to a member or former member through a supplemental plan."

**The Chair:** Any comments or questions?

**Ms. Horwath:** Chair, it's probably helpful if we just get the explanation as you put the amendments forward. That way we know what we're addressing.

**Mr. Duguid:** What this does is respond to employee groups' requests to lift the cap to allow future supplemental benefits, so that they can get access to future supplemental benefits without the cap interfering with that. Maintaining the cap on a primary plan will also serve as a cost containment feature, which is what I talked about before in terms of the employers and collective requests—and they have made collective requests to maintain the cap.

**Mr. Hardeman:** This, then, is in answer to the request from the OMERS presentation, where they said that there



are opportunities when the 50-50 split of contribution doesn't work, because it's in a buyback situation or something like that. Is that what this is?

**Mr. Duguid:** No. This allows for the cap to not have to apply in terms of supplemental benefits. I can't give an example. Maybe staff can give some examples.

**Ms. Hope:** One example would be, if in future there were a supplemental plan for folks other than the police, fire and paramedic sector, and there was a desire to look at—sorry, I always get it mixed up, whether it's a higher or lower CPP integration rate—that could be, then, considered through a supplemental plan.

Removing the so-called employer cap from the supplemental plans also permits the three-year final average earning benefit that was referenced in an earlier amendment. If this cap were kept on as a whole in the supplemental plans, the three-year and four-year final average earning benefits would not be permitted.

**Ms. Horwath:** With police, fire and ambulance workers, we referenced not only their ability but their specific outline of what they wanted to see happening with their supplemental plans. In the case of all others, not only do we not strike the specific cap, but now we put this kind of language in that doesn't seem at all to be equal to the language that we put in for police, fire and ambulance. I'm just trying to figure why the difference. I don't understand why the difference, why we've done something very specific in the one case, and in the other case, instead of striking the cap out, we now have this. I don't understand, so perhaps I could get an explanation of why this is before us the way it is.

**The Chair:** Do you want staff to answer this one? Mr. Duguid?

**Mr. Duguid:** I think I can respond to that. I think the employers, by and large, would have wanted us to maintain a cap for everything. I think realistically, given the desires of firefighters, police and potentially EMS at some point to implement supplemental benefits, in order for them to be able to effectively do that, we understood their request to have that cap lifted.

We also understand and are sensitive to the concerns of employers about the affordability of all this stuff. We're trying to do what we can, as I said before, to balance the needs of both employees and employers, and in doing this, we felt this is the approach we'd like to take.

**Ms. Horwath:** But just for clarification, this is "everyone but," I think staff said; this refers to everyone but police, fire and ambulance workers, right? This is for everyone else, or is this for them?

**Ms. Hope:** This would maintain the cap or the base plan for everyone. It would move the cap for any and all supplemental plans created, whether that's the supplemental plan that's specifically referred to elsewhere in the bill, or other supplemental plans that could be established in future for other employees.

**Mr. Hardeman:** I've heard a number of times now—is there anything in the bill that allows the sponsoring

body to set up more supplemental plans than the ones that we're speaking of?

**Ms. Hope:** The bill does not specifically reference other supplemental plans, but, provided the Canada Revenue Agency is willing to register a supplemental plan, there would be nothing in here that would prevent the sponsors corporation from setting up other—

**Mr. Hardeman:** Without federal change, though, they can't do it?

**Ms. Hope:** No, no. I'm sorry. There's nothing in this bill that prevents them from doing so, and we understand from Canada Revenue Agency that they imagine, in general, that any pension plan could conceivably have two or three—a limited number of supplemental plans. So there's nothing here that prevents the sponsors corporation from deciding in future to set up other supplemental plans.

*Interjection.*

**Ms. Hope:** I beg your pardon. It's been pointed out to me that it actually says that they may establish one or more supplemental plans in section 4 of the bill.

**The Chair:** Any further comments or questions on this amendment? Seeing none, a recorded vote has been requested on the amendment.

**Ayes**

Dhillon, Duguid, Lalonde, Matthews, Rinaldi.

**Nays**

Hardeman, Horwath.

**The Chair:** That's carried.

Shall section 12, as amended, carry? A recorded vote has been requested.

**Ayes**

Dhillon, Duguid, Lalonde, Matthews, Rinaldi.

**Nays**

Hardeman, Horwath.

**The Chair:** That's carried.

Section 13: Ms. Matthews, you're on deck.

**Ms. Deborah Matthews (London North Centre):** I move that section 13 of the bill be struck out and the following substituted:

"Cap on contributions by employer for increased benefits

"13(1) If, under a supplemental plan, a municipality or local board may provide an optional pension benefit for its employees in respect of which the annual benefit accrual rate is greater than 2.0% and less than or equal to 2.33% (the "increased benefit"), the municipality or local board may make contributions to the plan for the increased benefit in respect of the employees' pensionable service on or" before "the date on which the municipality

or local board decides to provide the increased benefit, but not in respect of pensionable service before that date.

"Same

"(2) Nothing in subsection (1) prevents an employee from making contributions to the plan for the pensionable service of the employee before the date on which the municipality or local board decides to provide the increased benefit."

**The Chair:** I'm sorry, Ms. Matthews. Could you reread it?

**Ms. Matthews:** Oh, really? Can you point me to which line I need to reread?

**The Chair:** It's "on or after." I think you said "on or before the date," near the end of the paragraph.

**Ms. Matthews:** I'll read the last two lines of that: "which the municipality or local board"—

**The Clerk of the Committee:** No, before that.

**Ms. Matthews:** OK. So I'm reading from the fourth line: "... the municipality or local board may make contributions to the plan for the increased benefit in respect of the employees' pensionable service on or after the date on which the municipality or local board decides to provide the increased benefit, but not in respect of pensionable service before that date."

**The Chair:** Thank you. Any comments or questions? I think Ms. Horwath asked for an explanation. Could somebody—

**Mr. Duguid:** Sure. I can give a brief explanation. This is just in response to the request from the fire sector to allow employees to buy back past service for the 2.33% pension accrual rate benefit. That's the explanation for it.

**Ms. Horwath:** Just to clarify, then, the first part there indicates no retroactivity for the employer. Is that right?

**Ms. Hope:** The earlier amendment that sets out the supplemental plan specifically refers to the 2.33% benefit on a go-forward basis only. So this permits, then, the employee, at his or her full cost, if he or she so chooses, to buy back past service.

**The Chair:** Any other comments or questions? There being none, should the amendment carry? A recorded vote has been requested.

#### Ayes

Dhillon, Duguid, Horwath, Lalonde, Matthews, Rinaldi.

#### Nays

Hardeman.

**The Chair:** That's carried.

Ms. Horwath, you have the next motion.

1750

**Ms. Horwath:** I move that subsection 13(1) of the bill be struck out and the following substituted:

"Contributions for increased benefits"—

**The Chair:** I'm sorry, Ms. Horwath. Apparently, that's out of order based on the previous decision we just

made, according to the clerk. So I'm going to rule it out of order.

Any comments or questions about section 13? Shall section 13, as amended, carry? A recorded vote has been requested.

#### Ayes

Dhillon, Duguid, Lalonde, Matthews, Rinaldi.

#### Nays

Hardeman, Horwath.

**The Chair:** That's carried.

Section 14.

**Mr. Rinaldi:** I move that section 14 of the bill be struck out and the following substituted:

"Contribution rate, benefits under multiple plans

"14. In determining the required contribution rate for the primary pension plan to be paid by the members of the primary pension plan who are also members of a supplemental pension plan and by their employers, the actuary shall use the best estimate assumption of retirement or termination or"—

**The Chair:** Mr. Rinaldi, just so everybody knows, this was the new motion that you were handed.

**Mr. Rinaldi:** Sorry, Madam Chair.

**The Chair:** It was my fault. I should have reminded everybody we have a new motion in front of us. It's with the amended motions. There were three of them that were handed out at the beginning. There is a version 1 and a version 2. This is the version 2, right?

**Mr. Rinaldi:** Correct. I'll start all over again, Madam Chair.

I move that section 14 of the bill be struck out and the following substituted:

"Contribution rate, benefits under multiple plans

"14. In determining the required contribution rate for the primary pension plan to be paid by the members of the primary pension plan who are also members of a supplemental pension plan and by their employers, the actuary shall use best estimate assumptions to assess the likely impact of the benefits provided by the supplemental plan on the required contribution rate that would otherwise be payable."

**The Chair:** Mr. Duguid, did you want to explain this motion?

**Mr. Duguid:** Yes. This is something that we've talked about quite a bit. I've had an opportunity to talk about it quite a bit with staff. It comes from CUPE's request to clarify the principle of having members of the supplemental plan pay for all the costs associated with those plans.

We're all in agreement with that. It's a case of trying to find some legal language that works. I'm going to ask staff to just verify for the committee's use that, in fact, this does exactly what we're setting out to do, and that's to ensure that members of a primary plan are not going to



pay for supplemental benefits under this amendment. That's the idea of the amendment.

I read it and, as members opposite probably see, I honestly don't know whether it does that or not. So that's why I'm asking staff to comment on it for you.

**Ms. Hope:** This directs the actuary, who is responsible for determining and recommending what the rate should be, to take into account the changes in retirement behaviour that individuals who have access to a supplemental plan are likely to have.

**Ms. Horwath:** Just a point of clarification: In effect, this is what the government would recommend as opposed to what we were suggesting around the transfer of funds to cover off any rebound costs?

**Ms. Hope:** Yes.

**The Chair:** Any other comments or questions? Seeing none, shall the amendment carry? A recorded vote has been requested.

#### Ayes

Dhillon, Duguid, Lalonde, Matthews, Rinaldi.

#### Nays

Hardeman, Horwath.

**The Chair:** That's carried.

Shall section 14, as amended, carry? A recorded vote has been requested.

#### Ayes

Dhillon, Duguid, Lalonde, Matthews, Rinaldi.

#### Nays

Hardeman, Horwath.

**The Chair:** That's carried.

Shall section 15 carry?

**Ms. Horwath:** Madam Chair, I'm not going to be supporting section 15. Again, I think it enshrines the whole issue as to the restrictions in negotiations of the removal of various caps, particularly for the requests that came from some employee groups, including the Canadian Union of Public Employees, which is the largest single number of members of the plan. So I won't be able to support it.

**The Chair:** Any other comments or questions on this section?

**Mr. Hardeman:** This is the section for solvency reserves, is that the one we're on?

**The Chair:** We're on section 15.

**Mr. Hardeman:** "The sponsors corporation shall not amend the primary pension plan in a manner which reduces contributions or increases going concern liabilities"—is that the one we're at?

**Ms. Hope:** Yes. It's not about solvency per se.

**Mr. Hardeman:** But isn't that, "is not less than 1.05 and the ratio of the solvency assets to the solvency liabilities is not less than 1.00"?

**Ms. Hope:** I'm sorry, I was thinking perhaps you were referring to another solvency issue, which has been a subject of some discussion. I apologize.

**Mr. Hardeman:** This is really just saying that they can't make changes that would bankrupt the plan.

**Ms. Hope:** It's saying that there has to be a reserve in excess of full funding in the plan before material benefit changes could be made.

**Mr. Hardeman:** Thank you.

**The Chair:** Any more comments or questions on this section? Seeing none, a recorded vote has been requested. Shall section 15 carry?

#### Ayes

Dhillon, Duguid, Lalonde, Matthews, Rinaldi.

#### Nays

Hardeman, Horwath.

**The Chair:** That's carried. Section 16?

**Ms. Horwath:** I move that subsection 16(2) of the bill be struck out and the following substituted:

"Information

"(2) The administration corporation shall give the sponsors corporation such information, reports and documents as the administration corporation considers necessary and appropriate in order for the sponsors corporation to fulfill its objects under this act.

"Same

"(3) The administration corporation shall upon request provide to an organization that may appoint a member to the sponsors corporation such information, reports and documents relating to the governance of the OMERS pension plans."

**Mr. Duguid:** We won't be supporting this. We're a little concerned that it could conflict and create confusing interpretations with the Pension Benefits Act and the Municipal Freedom of Information and Protection of Privacy Act. The administration corporation is already required to provide information to the sponsors corporation.

**The Chair:** Mr. Hardeman, did you have your hand up?

**Mr. Hardeman:** I was just going to ask the mover of the motion: Is the appointing of a member to the sponsors corporation the only change that's being made from what is there presently?

**Ms. Horwath:** Let me just confirm that. It adds another subsection, subsection (3). What it does is basically say that information can be provided to an organization that appoints a member as well as to the sponsors corporation itself. Again, it's to reflect the concern around provision of information, transparency of information and putting the onus on the administration

corporation to provide the information that's requested of it.

**Mr. Hardeman:** It seemed redundant to me when it said that any member who's a part of the sponsoring organization is entitled to get information that's available to the sponsoring organization. I would think that they would get that in their regular agenda once every three years.

**Ms. Horwath:** Good point, Mr. Hardeman. I think that's part of the point, to increase the flow of information and make sure that that relationship is one that's more proactive as opposed to just reactive.

**The Chair:** Any further comments or questions on this amendment? Seeing none, a recorded vote has been requested.

#### Ayes

Hardeman, Horwath.

#### Nays

Dhillon, Duguid, Lalonde, Matthews, Rinaldi.

**The Chair:** That's lost.

Government motion, page 17.

**Mr. Vic Dhillon (Brampton West–Mississauga):** I move that subsection 16(2) of the bill be struck out and the following substituted:

"Information

"(2) The administration corporation shall give the sponsors corporation such information as the sponsors corporation may reasonably request for the purpose of carrying out its objects under this act."

**The Chair:** Mr. Duguid, did you want to provide an explanation?

**Mr. Duguid:** A number of employee and employer stakeholders have requested that there be clearly separate roles for the corporations, and this complies with that principle.

**The Chair:** Comments or questions?

**Mr. Hardeman:** Just a little further explanation, I suppose. I understand the parliamentary assistant's point that we want to make sure that we have the clear delineation

of responsibilities between the two organizations, but I don't see what the wording change is going to do to increase that divisional line.

**Mr. Duguid:** It provides a little clarity as to the differentiation between the roles and responsibilities of the admin committee and the sponsors committee. It would change the term "governing the OMERS pensions plans" to "carrying out the objects of the sponsors corporation," so it's keeping the use of proper terminology to ensure that there's proper separation between the two committees.

**The Chair:** Any other comments or questions on the amendment? Seeing none, a recorded vote has been requested.

#### Ayes

Dhillon, Duguid, Hardeman, Lalonde, Matthews, Rinaldi.

#### Nays

Horwath.

**The Chair:** That's carried.

Shall section 16, as amended, carry? A recorded vote has been requested.

#### Ayes

Dhillon, Duguid, Lalonde, Matthews, Rinaldi.

#### Nays

Hardeman, Horwath.

**The Chair:** That's carried.

Committee, I believe we have about a minute left. I don't know that we can finish another section. I'm going to rule that this committee now stands adjourned until 4 p.m. on Wednesday, November 30, 2005.

*The committee adjourned at 1802.*





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Mr. Tom Melville, legal counsel,

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Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

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# Journal des débats (Hansard)

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 30 November 2005

Mercredi 30 novembre 2005

*The committee met at 1533 in room 151.*ONTARIO MUNICIPAL EMPLOYEES  
RETIREMENT SYSTEM ACT, 2005LOI DE 2005  
SUR LE RÉGIME DE RETRAITE  
DES EMPLOYÉS MUNICIPAUX  
DE L'ONTARIO

Consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act /  
Projet de loi 206, Loi révisant la Loi sur le régime de  
retraite des employés municipaux de l'Ontario.

**The Chair (Mrs. Linda Jeffrey):** The standing committee on general government is called to order. We meet today to resume clause-by-clause consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act. We will now continue clause-by-clause consideration of the bill.

Committee, you have before you the definition in section 1. As you recall, we stood down consideration of section 1. Is there unanimous consent to resume consideration of section 1 and any amendments to that section?

**Mr. Tim Hudak (Erie–Lincoln):** Hold on, Chair.

**The Chair:** We're going to discuss it; it's just to discuss it.

*Interjection.*

**The Chair:** This was section 1, which you asked questions on, Mr. Hardeman. This is the material, so now you can discuss it. We stood it down. We didn't vote on it.

**Mr. Ernie Hardeman (Oxford):** On a point of order, Madam Chair: I would just question why we would need unanimous consent to consider the items that we had previously stood down. If we're looking for unanimous consent, we're doing something out of the ordinary.

**The Chair:** We have to get unanimous consent to go back to section 1 because we stood it down. This is just to go back to the beginning. When we finish section 1, we go back to 17, which is where we left off.

**Mr. Hudak:** I apologize, Chair. I had a conflict and was unable to be here for clause-by-clause this past Monday, so you're catching me a bit off guard with the unanimous consent request. I thought we had actually

proceeded all the way through the first 17 motions, or something like that.

**The Chair:** We missed section 1 because there was a question about a definition. We waited until we had the definition of a member of a police force in the act, which Mr. Hardeman requested. We felt that in order to help him be able to debate that section more effectively, we waited till we had the definition. Now we have the definition. So if we have unanimous consent, we can discuss this item and determine whether or not there's support for section 1 and the amendments.

**Mr. Hudak:** Let me make sure I understand. There were no amendments debated with respect to section 1.

**The Chair:** No.

**The Clerk of the Committee (Ms. Tonia Grannum):** Yes, there was. Page 2 was on the floor.

**The Chair:** I think we were at 2a.

**The Clerk of the Committee:** We were on page 2, Ms. Horwath's motion. That's where we actually stood it down.

**The Chair:** Subsection 1(4), which was the NDP motion, is where we were.

**Mr. Hudak:** I apologize, Chair. Just give me a chance to catch up here. We're looking for unanimous consent to talk about section 1, which is the definitions. Am I following correctly?

**The Chair:** Page 2 in your amendments. If you go back to the amendments, page 2 is where we were. In order to discuss this item, Mr. Hardeman felt it would be better if we had the definition, so we agreed to stand down this amendment until that information was available. This information is now available, so we're asking for unanimous consent in order to discuss this amendment.

**Mr. Hudak:** Just making sure I'm sure: You're asking for unanimous consent to discuss this, then, relative to subsection 1(4), which is NDP motion 2 in my pile?

**The Chair:** Yes.

**The Clerk of the Committee:** And all the motions to section 1, because we stood down consideration of section 1 and any motions to it. Now we're going to go back to section 1 and deal with all the motions that are there.

**Mr. Hudak:** If you don't mind, just for clarity: in the list that I have, the numbers of the motions that are now moving back into consideration if unanimous consent is given?

**Mr. Hardeman:** Just for clarification, the definitions that I was asking for are in fact for subsection 1(4).

**The Chair:** Yes.

**Mr. Hardeman:** That's where the amendment was.

**The Chair:** That's where you asked for the definition in order to understand section 1 better. We have not passed the section. We've only passed one amendment within section 1. The rest of the amendments are still on the table for discussion.

**Mr. Hudak:** Not to belabour the point, Chair, but I don't think I have the full—

*Interjection.*

**Mr. Hudak:** Here we go. I have a fresh package of amendments, right off the press. So 2a has not been debated.

**The Clerk of the Committee:** No, and neither has 3.

**Mr. Hudak:** These were stood down pending more information on the definitions of fire and police and that sort of thing.

**The Chair:** Yes. So you should have in front of you an additional piece of paper that just has definitions added. It has "Police Services Act" at the top of the page, with "Definitions" beside it, which will hopefully help in our discussions of this amendment.

Can I have unanimous consent to bring section 1 forward again? All those in favour? Agreed.

Since it's an NDP motion, Ms. Horwath, would you like to resume discussion on amendment 2?

**Ms. Andrea Horwath (Hamilton East):** Do I need to read it into the record again?

**The Chair:** I don't think so.

**Ms. Horwath:** Again, it's in front of you. I think we discussed it as a result of a number of questions that came up. It was a matter of clarification of the language. I'm happy to put that amendment forward, as was discussed at the previous meeting, and I don't think there's much more to say about it. I think staff are bringing forward the definitions for us.

**The Chair:** Mr. Duguid.

1540

**Mr. Brad Duguid (Scarborough Centre):** We're pleased to support this. Just to confirm, this is the motion that adds paramedics into the mix in terms of the supplemental benefits. That's what I'm assuming. We will be supporting that motion. It's similar to the motion that Mr. Hardeman had brought forward, at least to support this.

We will be withdrawing the government motion—I don't know if we need unanimous consent to do that—which went beyond that. If we don't need unanimous consent to do it, then we just—

**Ms. Catherine Macnaughton:** No. Just don't move it.

**Mr. Duguid:** —need not do that. Good.

**The Chair:** Okay. Mr. Hudak.

**Mr. Hudak:** I appreciate the motion from my colleague from the third party. It does appear to be quite similar to the motion brought forward by my colleague Mr. Hardeman.

Maybe if I could just ask staff to help me understand what—this is early in the bill in definitions, so what new treatment will there be for paramedics if this motion and the bill were to pass?

**Ms. Janet Hope:** If this motion were adopted, it would maintain the definitions of police and firefighter that were in the bill, as originally tabled. It would add paramedics. So whenever there are references in the bill to police and fire sectors, it would include paramedics in that mix. I think that's particularly relevant with regard to the references in the bill to supplemental plans for the police and fire sectors.

**The Chair:** Can I interrupt for just a second. Before any of the staff speaks again, could you identify yourself, at least at the beginning, to assist Hansard, because we are beginning a new day.

**Mr. Hudak:** Thank you to staff. So basically, this would mean that the references laid in legislation to supplemental plans would then include paramedics, but we still will be voting on that particular sentence.

**Ms. Hope:** I think that might have been dealt with on Monday.

**Mr. Hudak:** It's already dealt with. The supplemental plans—

**The Chair:** Can you repeat the question?

**Mr. Hudak:** Yes, no problem, and then if we need to look it up, a second question.

I'm just trying to understand, if the NDP motion were adopted, how that impacts other sections of the bill. Specifically, the paramedics have made a case to be included in supplemental plans, which I talked about as well. I just wondered if that had already been addressed by the committee on Monday or if it had not, specifically the treatment of supplemental plans.

**Ms. Hope:** Government motion 9 is the one that dealt with "Optional increases, police and fire sectors," and I believe the committee dealt with that motion on Monday.

**Mr. Hudak:** That was dealt with. OK.

And then, secondly, just to make sure I'm clear too, when we refer in the section to the Police Services Act, does that include those employed by police forces who are civilian officers, or not?

**Ms. Hope:** Yes. The definition in this motion includes the broader definition of police; it includes civilians.

**The Chair:** Any further discussion?

**Mr. Hardeman:** Just so I understand this motion, I recognize that this motion is exactly the same as the bill presently is, save and except that it adds ambulance attendants to the act.

Going to the government motion, the last time we met it was explained that the wording was such that there may be other employees within the fire service working for the police services board or for the fire services who shouldn't be considered emergency workers, and that's why it was worded that way. It would seem to me that the explanation we got on the definition would be true, that this is going to include more people than the amendment would have. Is that true?



**Mr. Duguid:** I think so. The original motion would have split off non-uniformed employees in the police service from uniformed employees in the police service. It wouldn't have impacted fire service employees for a variety of reasons. The government has withdrawn that motion, so it would now apply to all employees in the police service. Some of the reasons were brought up by yourself at committee; you were asking questions on it. We were asking questions on that as well among ourselves and decided the best route to go would be to withdraw the motion altogether and go with the motion supported by the opposition members.

**Mr. Hardeman:** I guess, Madam Chair, I'm getting a little concerned that the government would pick this time to support an opposition motion when it gives more pensions, when in fact a lot of people who made presentations to our committee had been very worried about the cost of the supplemental plans.

I guess my question would be, then, in the estimation of the government, is the plan going to cost more or less without the government motion? If the government wants to withdraw the motion that's still here, if it's better for the plan, would it be appropriate if I read it into the record and it came in that way? What would the government do with that?

**Mr. Duguid:** We're not supportive of going in the direction of the original motion. On further contemplation, we decided that wasn't the route we wanted to go. So we wouldn't be supporting that direction.

With regard to the cost estimates that you've heard throughout, as rough as they are, they would not have excluded the non-uniformed employees of the police services. So those cost estimates would have included those costs anyway.

**Mr. Hudak:** If I could, by way of clarification, to staff: Paramedics as defined in subsection 1(1) of the Ambulance Act, do you have that handy to let us know what that means exactly?

**Ms. Hope:** I have the police definition and I have the fire definition in front of me. No, I'm sorry, I don't have the paramedic definition with me.

**Mr. Hudak:** Maybe the gentleman beside you has some—

**Mr. Tom Melville:** Tom Melville, legal services branch, municipal affairs and housing. I don't have the definition in front of me, but I recollect that paramedics were defined in the legislation as persons who primarily perform controlled medical acts. That seemed to be the chief part of the definition.

**Mr. Hudak:** OK. We had a number of deputations from various unions that represented different sets of paramedics. There was OPSEU and CUPE, among others. So basically—I know we don't have it in front of us, and I appreciate your efforts to try to find it—any of those employee groups who practise as paramedics in the province of Ontario and are part of the OMERS plan will be covered by this; we'll be covering all the paramedics in the province?

**Mr. Melville:** In accordance with the definition in the legislation, yes.

**Mr. Hudak:** Then, because the section on supplemental benefits had been adopted by the committee Monday, this effectively means that paramedics will be eligible—is it eligible or mandatory to have supplemental plans?

**Mr. Melville:** It expands the class of persons eligible to benefit from the supplemental plan.

**Mr. Hudak:** That is with the benefit? OK.

Lastly, with respect to the paramedics—I apologize, and maybe the clerk can help me out too. One of the issues that the paramedics had talked about was representation on the advisory committees on supplemental plans, as well as positions on the sponsors committee. Have we dealt with that yet or is that still to come?

**Ms. Hope:** That's still to come.

**The Chair:** Any further debate or questions about this amendment that is before us? All those in favour? All those opposed? That's carried.

I believe 2a is out of order as it is exactly the same as the NDP motion, and the government motion has been withdrawn.

**Mr. Hudak:** On a point of order: Because my colleague Mr. Hardeman has done a great deal of work, as has Ms. Horwath, could we record that as the Horwath-Hardeman amendment?

**The Chair:** I don't know. Is that a friendly—

**Mr. Hudak:** It's doubly friendly.

**The Chair:** I think the fact that it's recorded in Hansard is sufficient.

Shall section 1, as amended, carry? All those in favour? All those opposed? That's carried.

**Mr. Duguid:** Could we now move to reopen section 9? That's the defined benefits section.

1550

**Ms. Macnaughton:** It was voted down.

**The Chair:** Just a second. Let me just have a look at the section. I think we need unanimous consent in order to reopen the section.

**Ms. Macnaughton:** Because we've defeated that.

**The Chair:** Because it was defeated on Monday.

Mr. Hudak.

**Mr. Hudak:** Just to help me, the parliamentary assistant is asking to revisit section 9 and for unanimous consent to open up section 9 again. I do apologize. I did have to work to provide some very good material for question period these last two days and—

**The Chair:** Are you commenting about section 9, Mr. Hudak?

**Mr. Hudak:** I am, just by way of background. So we're jumping ahead to section 9. I probably just asked that, but have we already proceeded through all the proposed amendments to sections 3 through 8?

**The Chair:** Yes.

**Mr. Hudak:** We're not revisiting that at all?

**The Chair:** No.

**Mr. Hudak:** There's no intention by the government members to reopen sections other than those that we've already discussed?

**The Chair:** Not to my knowledge.

The request on the floor is to reopen section 9, and we need unanimous consent in order to do that. We're at the point of debate on that subject.

**Mr. Hardeman:** On a point of order, Mr. Chair: Is there debate on the request for unanimous consent?

**The Chair:** I don't think so, but I'm just clarifying it, because I've been accommodating—

**Mr. Hardeman:** So the answer is, there's no unanimous consent.

**The Chair:** I think what I've been doing is trying to accommodate Mr. Hudak's request for information.

Ms. Horwath, do you have any other comment or do you want to vote on this issue?

**Ms. Horwath:** I was just trying to recall what section that was, but I just found it—

**The Chair:** Section 9.

**Ms. Horwath:** —so I recognize what that was. But I am prepared to vote on it.

**The Chair:** OK. Are there any other clarifications that we need?

**Mr. Hudak:** As members of the committee know, it's quite rare for a committee to revisit sections of an act that have already been debated and voted upon. I know the government members and staff from the Ministry of Municipal Affairs have been working diligently on amendments as they heard from deputants throughout the hearings, and I think you had brought forward amendments to section 9 on Monday.

**The Chair:** No.

**Mr. Hudak:** No amendments have been brought forward on section 9?

**The Chair:** No. I think what we're really waiting for now is a vote. Is any more clarification necessary?

*Interjections.*

**The Chair:** It's a question. I'm trying to accommodate people who haven't been here before.

All those in favour—

**The Clerk of the Committee:** No. Is there unanimous consent?

**The Chair:** Is there unanimous consent? I hear a no.

OK. We're moving on to section 17.

Committee, we're at section 17 and the motion is on the floor. Ms. Horwath.

**Mr. Duguid:** We're not bringing forward—

**Ms. Horwath:** Hold on, Madam Chair.

**The Chair:** Page 18. You have to move it. We were not at the point where you'd read it into the record.

**Ms. Horwath:** This is subsection 17(2). Is that where we're at?

**The Chair:** Yes.

**Ms. Horwath:** I move that subsection 17(2) of the bill be amended by adding "after consulting with the sponsors corporation" after "administration corporation."

**The Chair:** Any comments or questions?

**Mr. Hudak:** Just before I make comment on my colleague Ms. Horwath's proposed amendment to subsection 17(2), I didn't get a chance to jump in soon enough on the early proposal on reopening section 9. I know unanimous consent has been denied. I don't think the intent behind reopening a section that had already been debated by this committee was explained to us. Nonetheless, hopefully we'll have a chance to address this bill in second reading hearings, and perhaps at that point in time we can revisit issues surrounding section 9.

If I could, on subsection 17(2), just to help me understand how this would impact on the bill by including after "with the sponsors corporation" after "administration corporation," I'm looking for clarification from my colleague or maybe from staff about the intent of this amendment.

**Ms. Horwath:** What it basically does is require that the administration corporation consult with the sponsors corporation in determining the actuarial methods and assumptions. That's the point. People will recall that through the hearings one of the concerns was the structure, particularly raised by the union that has the largest number of members in the plan, and they were concerned particularly around the structure. They raised many points about the administration corporation and the sponsors corporation. One of the things they have asked us to do and that we've been looking at doing is providing some amendments to this bill that will help ensure a better relationship between admin and sponsors, particularly around the provision of information, the clarity of information, ensuring that the administration corporation has some—I guess the better way to put it is that the sponsors corporation has some oversight capacity over the admin corporation, at least insofar as things like the actuarial figures and the methods being transparent, clear and reported to the sponsors corporation.

**Mr. Hardeman:** Through to the mover of the motion, I'm just a little concerned here. By adding "after consulting with the sponsors corporation," are you also suggesting that we remove "based upon recommendations from the actuary"?

**Ms. Horwath:** No, I'm not.

**Mr. Hardeman:** You're just putting it in between those.

**Ms. Horwath:** Yes, inserting it. I'm not asking that anything be struck. I'm just asking that there be an amendment adding "after consulting with the sponsors corporation" after where you see in the bill the words "administration corporation." It's still based on the recommendations of the actuary.

**Mr. Hardeman:** In the intent of the motion, though, what is it that they would be consulting about? It just seems to me that it's nice to tell people they have to talk to somebody, but there's no directive as to what they're supposed to get from the sponsoring corporation before they look at the actuary's numbers to show what they can or cannot do.

**Ms. Horwath:** Yes. I guess the point is that there has been a significant concern over some of the past deci-



sions of OMERS. There have been allegations about some of the policy decisions that were made, some of the investment decisions that were made by OMERS. In this structure, there's a concern that those kinds of policies can continue to happen if there is no requirement in legislation for there to be this transparency of dialogue between the two corporations. So the sponsors corporation sits in one place and meets once every three years, while the admin corporation has all the responsibilities for the investment policies of the plan and the various other day-to-day operations.

The issue, at least from the perspective of some of the stakeholders, is that in fact that's not good enough. The plan members have a huge stake in what happens with their investments, if you want to put it that way, and so they want to make sure that there is something built into the legislation that requires that dialogue to take place, that requires the admin corporation to be as transparent as possible with the actuarial information.

**The Chair:** Mr Hudak?

*Interjection.*

**The Chair:** Will this help, maybe, if somebody else asks a question—possibly? OK. Continue.

**Mr. Hardeman:** Fine. They can keep—

**The Chair:** I'm just trying to follow in order, when people indicate to me they want to ask a question.

**Mr. Hardeman:** I'm just wondering if the intent of putting it in there has any positive impact. One of the things that the OMERS presentation was quite emphatic about was to make sure we clearly define who does what, so there's no overlap in responsibilities. This would be, to me, a way of creating confusion over who's responsible, when it says, "This is the report you'll have. This is what you must base your decision on, but you must talk to someone else before you make the decision. But in the end, you still get to make the decision." It seems to me it's going to cause more confusion, rather than transparency, as to who does what and when they have to do it.

**Ms. Horwath:** I would submit, then, that there are two different interests who have an opinion on how this should be done, and that's the bottom line. If the member doesn't feel comfortable with the amendment that I'm putting, then he votes against it. But that's actually quite clearly what I'm trying to do, not to obfuscate the language or the roles. However, it's really clear that some of the people who are interested in this particular structure, who have an interest in their pensions, are concerned about the underlying assumptions that are used by the admin corporation in making its recommendations, as well as the actuarial methods that are used. What this motion does is ask or require that the admin corporation consult with the sponsors corporation in the determination of both the actuarial methods and the assumptions underlying them.

1600

**Mr. Hudak:** Maybe if I could, by way of example to my colleague—and fair enough: There were a number of groups that came forward, a number of the union groups,

particularly, as you said, with some larger employee groups. I know some of these employee groups object to public-private partnerships. So if we have other P3 hospital projects that OMERS wanted to invest in, the administration corporation, your amendment would suggest that they should consult with the sponsors corporation before making that kind of investment?

**Ms. Horwath:** I'm not presupposing any particular situation. All I'm doing is putting forward a motion that requires that accountability to be put into place between the sponsors and the admin. Again, it's not for one specific reason or another in terms of any particular investment except to say that there is a requirement that is being asked for to increase the transparency of the kinds of initiatives and activities that are being undertaken by the admin corporation vis-à-vis the sponsors corporation.

**Mr. Hudak:** Maybe I could direct this to staff. On Ms. Horwath's proposed amendment—and there are other, similar public pension plans that separate out the sponsors corp from the administrative corp. My colleague Mr. Hardeman said a number of groups, including OMERS itself, talked about maintaining the integrity of a plan by having a clear delineation between the administrative corp and the sponsors corp. Is Ms. Horwath's proposed amendment common among these types of pension plans, or would that consultation with the sponsors corp be out of the ordinary?

**Ms. Hope:** I can't comment on the specifics of any plans, but there is a general principle in most pension plan governance to try to create a clear distinction between the fiduciary responsibility and the sponsor responsibility.

**Mr. Hudak:** HOOPP may be a good comparator here. Here's a multipartite, if you will, employer-employee group. Do they have a sponsors corp as well as an admin corp?

**Ms. Hope:** I'm afraid I can't speak specifically to HOOPP off the top of my head. I know that there are a number of public sector plans that have a sponsor entity, whether it's a corporation or not, as is proposed here, and have an administrative organization or corporation that undertakes the fiduciary responsibility.

**Mr. Hudak:** Right. But you can't say with certainty that the other plans similar to the proposed OMERS Bill 206 would have an amendment or language like Ms. Horwath is proposing.

**Ms. Hope:** We wouldn't have looked at the bylaws of each plan to be able to verify this specific type.

**Mr. Hudak:** I don't know if there's anybody here from OMERS. I know they were sitting through the committee hearings. Is there anybody else who can offer some assistance on whether Ms. Horwath's suggestion, which I know a number of groups have proposed, is out of the ordinary, or if that's a common aspect of similar types—

**The Chair:** I think you're going to have to ask your questions of staff.

Ms. Horwath, I'm going to give you the floor. You wanted to clarify?



**Ms. Horwath:** Part of the point of this entire bill is to get OMERS to be autonomous. The government made specific decisions around what that would look like. Many stakeholders felt that the better way to go about things would be through a jointly trustee plan. In fact, jointly trustee plans, by and large, don't have two separate corporations doing all these different jobs; they're jointly trustee plans. So either OMERS is going to grow up and be an adult organization, do its own thing and be out from under the wing of government, and we should give it the authority and ability to do that—the government chose to do it in a way that's more the corporate model, with the admin corporation and the sponsors corporation.

There was another path to take; it's called the jointly trustee plan. Unfortunately, the government decided not to go that way. What I would like to do is try to get some sense of dialogue happening or some sense of accountability happening between those two groups. The better of all three worlds would probably be a jointly trustee plan.

**Mr. Hudak:** I don't know, and maybe the parliamentary assistant can help too. I appreciate that we have staff here that know this bill inside and out and are working very hard on this bill. Are there other staff in the room who can respond to some of our questions? I know this is under the purview of municipal affairs to an extent, it's more so on the pension side. Do we have additional resources at hand?

**Mr. Duguid:** I'll respond to your questions.

**Mr. Hudak:** The question that I asked staff in terms of—Ms. Horwath has language and then she has subsequent amendments that have a similar theme, which is creating greater interaction between the admin corp and the sponsors corp. I was simply wondering in other pension plans, whether they be HOOPP or CAAT or the BC plan, for example, if these types of interactions are common, or is this an extraordinary change that Ms. Horwath is asking for?

**Mr. Duguid:** I think there's a variety of different pension plans out there.

**Mr. Hudak:** Just a quick question, Chair: Is there staff from OMERS available to respond to this, or other staff aside from—

**The Chair:** I think the staff you have in front of you are the staff who are probably available. We have no other staff who are available to answer that question today.

**Mr. Hudak:** That's the full comment?

**Mr. Duguid:** That's my full comment, yes.

**The Chair:** Any further comments or questions on this amendment? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Shall section 17 carry? All those in favour? All those opposed? That's carried.

Shall section 18 carry? All those in favour? All those opposed? That's carried.

Section 19: Ms. Horwath.

**Ms. Horwath:** I move that subsection 19(2) of the bill be struck out and the following substituted:

"Reports and recommendations

"(2) The actuary shall give to the administration corporation and the sponsors corporation such information and reports as either corporation may request, and shall make such written recommendations as he or she considers advisable for the proper administration of the pension plans."

**The Chair:** Mr. Duguid?

**Mr. Duguid:** We won't be supporting this particular motion, and the reason is that we think it's impractical to suggest an actuary and staff of an administration corporation shouldn't be able to carry out a conversation. We think it might impact communications rather than assist.

**The Chair:** Any further comments or questions?

**Ms. Horwath:** This really is the amendment to the bill that embodies, if you will, the whole issue of trying to have some oversight occur by the sponsors corporation over the admin corporation. What it does is require the administration corporation, as well as the sponsors corporation, to receive the actuarial information and, as well, requires the actuary to provide recommendations for proper administration of the plan to the sponsors corporation rather than just to the admin corporation.

Again, it's very specific and it's very deliberate. It's the attempt to try to build in some accountability so that the people who are actually paying, either the plan members or the employers who are paying, who make up that sponsors corporation, can be assured that the administration corporation is working in their best interest, since it is their investment and it is the retirement income of those members who will eventually have to rely on it on retirement.

**Mr. Hardeman:** I guess I don't understand, and maybe the parliamentary assistant could enlighten me. Of the two corporations, are they not both run on equal representation from employer and employee?

**Mr. Duguid:** That would be our recommendation, yes.

1610

**Mr. Hardeman:** That's what's presently in the bill. I have a little concern about the assumption of this amendment, that the administration corporation will have the interest of one side of the issue more at heart than the other corporation. I just wonder why that would be. If they're a 50-50 split, both, it would be just as apt that it would be the other way around, that in fact it would be the sponsoring corporation that would not have the interest of the employees at heart. I can't understand the recommendation of trying to put two together if they're identical-type corporations. That's a question to the mover of the motion.

**Ms. Horwath:** There is some considerable concern over the proportion of representatives on either or both of those various corporations as they stood with the government's initial bill, so we have put some amendments. We will be putting amendments on what those corporations look like in terms of representation. The bottom line is that if those amendments don't pass, then this kind



of language needs to be built in. Even if they do pass, it needs to be built in as a way of clarifying and enshrining in legislation this perspective that there's an oversight to the admin corporation. It's got to be accountable in some way, and not just once every three years on a meeting of the sponsors corporation. It's got to be a lot more hands-on, or maybe "hands-on" is not the best word, but more functional rather than just theoretical.

**The Chair:** Comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Shall section 19 carry? All those in favour? All those opposed? That's carried.

**Ms. Horwath:** I move that section 20 of the bill be amended by adding "in writing" after "opinion."

**The Chair:** Any comments or questions? Mr. Hardeman?

**Mr. Hardeman:** No questions on it. I see absolutely no reason why one wouldn't support putting it in writing.

**Mr. Duguid:** It appears harmless, but we don't consider it to be really necessary, so we won't be supporting it.

**Ms. Horwath:** I want to suggest that my understanding is that, oftentimes, auditors' reports are done verbally, that a verbal update is given and then eventually the documentation may arrive. But this amendment asks for the auditor's report or opinion within 10 days in writing. That's what we're looking at. Even if it's an opinion, as opposed to an audited statement, it is still something that is put in writing so that everyone is quite clear and aware and there are no misunderstandings about what the point is that the auditor might be making in any opinion that is given.

**The Chair:** Any further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

**Mr. Duguid:** I move that section 20 of the bill be struck out and the following substituted:

"Auditor

"20. The administration corporation shall appoint one or more persons licensed under the Public Accounting Act, 2004 to audit the accounts and transactions of the OMERS pension plans each year and to express an opinion on the financial statements for the pension plans based on the audit."

What this does is remove a reference to the retirement compensation arrangements pertaining to the actuary, because we already added it through a previous motion that we've already passed. It would make that particular reference redundant.

**Ms. Horwath:** Just to be clear, this is more of a housekeeping kind of amendment to make it consistent with the amendments that were put at Monday's hearing?

**Mr. Duguid:** That's exactly what I would consider it, and staff are nodding their heads as well. I wanted to get their nod just to make sure I wasn't misleading you, but indeed it is housekeeping.

**Ms. Horwath:** Thank you.

**The Chair:** Any further comments or questions? Seeing none, shall the amendment carry? All those in favour? That's carried.

Shall section 20, as amended, carry? All those in favour? All those opposed? That's carried.

Section 20.1.

**Ms. Horwath:** I move that the bill be amended by adding the following section:

"Auditor opinion delivered to sponsors corporation

"20.1 Within 10 days after receipt of the written opinion prepared by the auditor under section 20, the administration corporation shall give a copy of the opinion to the sponsors corporation."

**The Chair:** Any comments or questions?

**Mr. Duguid:** We'll be addressing this, in part, through a subsequent motion, but what we don't want to do is dictate the time limit. That's what we want to try to avoid. We think that's something that the sponsors and administration corporations themselves should be deciding.

**The Chair:** Any further comments or questions? All those in favour of the amendment? All those opposed? That is lost.

Subsection 21(3).

**Ms. Horwath:** I move that section 21 of the bill be amended by adding the following subsection:

"Annual report delivered to sponsors corporation

"(3) Within 10 days after finalizing the report under subsection 21(1), the administration corporation shall give a copy of the report to the members of the sponsors corporation."

**The Chair:** Any comments or questions?

**Mr. Duguid:** Again, we won't be supporting this. The changed provision would say that the administration corporation shall give the sponsors corporation such information as the sponsors corporation may reasonably request for the purpose of carrying out its objects under the act, and that would include copies of the annual report. We think that's sufficient.

**The Chair:** Any further comments or questions?

**Ms. Horwath:** I think, again, that part of what these amendments are aiming at is to try to enshrine some of those layers of accountability. I have to say that when you provide timelines it actually encourages people to get things done in a timely fashion so that months and years cannot drag on, thereby perhaps inadvertently leading to errors or misjudgments or those kinds of occurrences taking place. So really, timeliness is an important issue, particularly when you're dealing with billions of dollars.

It seems to me that asking for some timelines to be enshrined is not a harmful thing, but rather a thing that's meant to be helpful insofar as those deadlines will allow for people to review documents and opinions and annual reports in a way that's meaningful so that the information that's contained therein can be acted upon if there's anything that's required to be acted upon in a timely fashion.

**Mr. Hardeman:** I agree with this motion, having just gone through debate at great length with one of the



pension plans that didn't function as well as it should have—a multi-employer pension plan. The number one issue that came out of it was that nobody was notified that things weren't going the way they thought they were, and two years later, it was too late to ask for the documentation and no one had done anything to straighten it out. So anything we can do to put timelines in there to make sure that not only thorough reporting is done but it's done in a timely manner is beneficial to the plan, so we don't end up with the pensioners being out because their employer didn't know that the plan was not functioning the way it should. I'll be supporting this amendment.

**Mr. Hudak:** This gets to a point I had brought up a few moments ago, and that's usual practices or best practices surrounding division of responsibility between the administration corporation and the sponsors corporation, whether it be in OMERS or other pension plans. I do appreciate that this bill has been sent out for first reading hearings. It's good to see, and we should do more of that. I'm trying to make my best judgment as to whether this motion should be supported or not.

What is the extent of staff available to respond to questions? I know we have two staff from the Ministry of Municipal Affairs. I know there are other staff in the room, including people from OMERS, who would probably have a great deal of expertise on best practices.

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**The Chair:** I think if you have a specific question, staff here will do their very best to attempt to answer those questions. That's what we have available to us today.

**Mr. Hudak:** OK. I'll ask the question very simply. There are other staff who are here and folks from OMERS. We're trying to work through first reading hearings, which I do appreciate. Are they available to respond to questions?

**The Chair:** No.

**Mr. Hudak:** Help me understand why that's the case. I appreciate the two staff we have, the municipal affairs staff. But if there are folks here from OMERS who have pension experience—

**Mr. Duguid:** They're stakeholders.

**Mr. Hudak:** —why couldn't they respond to some of our questions?

**The Chair:** Mr. Hudak, you're going to have to ask a specific question. I'm trying to deal with the amendment that's on the floor. We have a lot of material to cover. We did ask lots of questions on the first day that we did get additional information about. If we are unable to answer your questions today, we can try and get research for you, but we have amendments before us and staff who are equipped to answer questions based on the amendments in front of us.

**Mr. Hudak:** Maybe I could just simply ask the extent of the staff available to the committee on first reading hearings and why that's the extent.

**Mr. Duguid:** The staff that's available are quite competent and will be happy to answer your questions.

As for the OMERS staff, they're not employed by us. They're independent. They're a stakeholder. It would be highly unusual—in fact, it probably wouldn't even be in order—to have stakeholders come in and answer questions when we're going through clause-by-clause.

**The Chair:** Any further comments or questions on the amendment?

**Mr. Hudak:** Are there staff available who are experts in pension law?

**The Chair:** We have staff here today who are prepared to answer questions about the pension plan in front of you, about OMERS.

**Mr. Hudak:** Ms. Horwath's proposed amendment has a report-back mechanism: "Within 10 days ... the administration corporation shall give a copy of the report to the members of the sponsors corporation." Does that type of provision exist in other, similar pension acts, and if so, which ones?

**Mr. Melville:** Under the Pensions Benefits Act, which is provincial legislation regulating all pension plans, there are information and reporting requirements which apply to OMERS and other plans. I'm not aware of any 10-day provision, but there is an extensive range of access available for pension plan members and employers under that legislation.

**Mr. Hudak:** So is it fair to say that this would be a best practice?

**Mr. Melville:** I think it's fair to say it might have been an attempt to codify something like a best practice.

**Mr. Hudak:** Is it a common provision?

**Mr. Melville:** I'm not aware of similar provisions.

**The Chair:** Any further comments or questions?

**Ms. Horwath:** When was the Pension Benefits Act last updated? I think it was last updated in the 1980s. It's about 20 years old. I don't think e-mail was that popular back then, so I'm wondering if maybe some of these things that are not in the language now or that we don't see in existing plans is because some of those plans maybe weren't written at a time when it's just so easy to put an attached file to a document that's been approved. Let's face it, it's been approved already. It's been finalized. It's just a matter of putting a 10-day requirement to shoot somebody an e-mail with an attachment that's got the final report on it. I don't understand why it's difficult to support something like this. It seems fairly benign from my perspective.

**The Chair:** Any further comments or questions? Seeing none, shall the amendment carry? All those in favour? All those opposed? That's lost.

Shall section 21 carry? All those in favour? All those opposed? That's carried.

Ms. Horwath, you have the next motion, page 24.

**Ms. Horwath:** You're making me earn it today.

**The Chair:** I am making you earn it.

**Ms. Horwath:** I move that subsection 22(3) of the bill be struck out and the following substituted:

"Fiduciary duty of sponsors corporation

"(3) The sponsors corporation and its members are fiduciaries in relation to members, former members and



others entitled to benefits from the OMERS pension plan.”

**The Chair:** Any further comments or questions?

**Mr. Duguid:** We'll be opposing this. What it would do is create a fiduciary responsibility for the sponsors corporation in relation to members, former members and others entitled to the pension benefits. We believe it's a fundamental principle that we're trying to uphold here, separating the fiduciary responsibilities from the political or bargaining responsibilities of the sponsors. We don't think that would be in keeping with the role that we have in mind for both these separate corporations.

**Mr. Hudak:** I wonder if I could have a better indication, through staff, what the impact of this change would be.

**Mr. Melville:** The amendment proposed appears to create a fiduciary relationship or would attempt to create a fiduciary relationship between the sponsors corporation and members, former members and others entitled to benefits. A fiduciary relationship is a relationship that requires someone to look after the interests of the persons in that fiduciary relationship. The amendment, as proposed, would create that very strong duty as between members and former members of the plan but doesn't have any mention of employers. So for one thing, I think it's fair to say as a factual matter that it would be one-sided.

**Ms. Horwath:** The bottom line is that this is exactly the way I think it was described by the parliamentary assistant. This gets to the whole issue as to the decision the government made around how this plan is operated and whose interests it serves. I would think that the change to make the sponsors corporation subject to fiduciary obligations, as opposed to corporate law obligations—again, you will recall that I asked this of the minister initially when he made his opening remarks at the public hearings process, as to why the decision was made to go down the road of more of the corporate model as opposed to a trustee model. If I recall, he described some process that was undertaken several years ago under the previous government, that none of the stakeholders were happy about, that ended up forming the basis of this bill, unfortunately.

The reality is that all of the parties of a sponsors corporation are interested, obviously, in making sure that the plan is healthy and solid, not only now but well into the future, and will continue to be solid well into the future. The fiduciary responsibilities add that broader context that plan members and former plan members think are important when we're talking about their retirement savings, if you want to call them that.

Certainly there are two groups paying in, but the bottom line is that the one group pays out of the wages they earn and the other group is paying deferred wages of the earners. So really, all the money in there belongs to the plan members, one way or another. It's either the money they've earned or the actual cash they gave up to put into their pension plan instead of getting it in wages from their employer's contribution.

I think this is an appropriate amendment. It's one that reflects the special nature of this kind of pension plan, that is really in the interest of the members who it's supposed to be serving.

**Mr. Hardeman:** I'm not a pension expert, so I'm a little slower than most. Does this mean that the directors, the representatives on the sponsors corporation, are in fact supposed to base their decisions on how it will benefit their present members and pensioners, as opposed to the effective operation of the corporation for the future? Which is the high priority in this motion?

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**The Chair:** Are you asking staff or are you asking the mover?

**Mr. Hardeman:** Well, I guess we could ask staff. Ms. Horwath has told us why she is doing it. I just wondered, what would this do? If I were one of the members on that board and I read that section, what would I think was happening with that section?

**Mr. Melville:** I think, as I said previously, this would create a duty for the member on the sponsors board to look after the interests of, as it says here, “members, former members and others entitled to benefits.” There's no mention of employer interests in this, so in effect it's a duty to look after the interests of one side of the equation as a factual matter and not the other.

**Mr. Hudak:** Maybe on that point, to my colleague Ms. Horwath, the staff has raised the point that that leaves off employers, that they have a fiduciary duty to members, former members and others if this were to pass. Are you worried about the needs of the employers on that panel as well? Would they be, I guess unfairly, left out of the consideration if this amendment were to be passed?

**Ms. Horwath:** I'm sorry; I'm not sure in what way employers' interests will be left out. The intent of the motion is to indicate that the fiduciary responsibility is to the people whose pension plan it is. It's not the employer's pension plan per se, the municipality itself that might be an employer. It's not the municipality's pension that's going to be affected in any way by any decision; it's the individual members who pay into that pension plan. Certainly part of the contributions to the pension plan are made by employers, but I would submit that even the employer portion that gets put into the pension plan is the deferred wages of the employee, because the employee didn't get that as a raise; they got it as an employer contribution into the pension plan instead.

I guess I'm saying that I wouldn't think this in any way indicates a negative onus on any of the members of the sponsors corporation to not consider anything that the employer sponsors would have to say, but that when it comes to making decisions, the fiduciary obligation is to the plan members, the former plan members and the future plan members.

**Mr. Hudak:** If I could, to staff again, one of my usual questions: Does this type of obligation exist in any other public pension plans?

**Mr. Melville:** I can't answer that specifically because I'm not aware of any exact parallels. But the pension plan



administrator, which is the administration corporation, does have a fiduciary duty to the members of the plan and the former members. That body is the one that's responsible for such functions as actually administering pensions to pensioners or making investments, so their fiduciary role is to balance the interests of them all as administrator. The function of the proposed sponsors corporation is to make changes to the plan from time to time. It's quite a different role.

**Mr. Hudak:** And would you describe this proposed amendment as a best practice?

**Mr. Melville:** I could not describe it as such.

**Mr. Hudak:** I think this goes to the heart. I know my colleague has brought forth amendments, and these amendments have been suggested by groups that have been before the committee. Philosophically, and I think government members have voted this way, it's important to maintain the integrity of the plan to make sure there's a clear delineation in the responsibilities of those who are sent there to participate in the administration corp and those who are meant to be sent there in the sponsors corp. They have very different responsibilities and spheres that, in the general sense, should not intersect. I think that would be a fair way of describing best practices.

Maybe I've got to understand better the intent of the bill to make sure I'm right. I mean, is the role of the individuals who are sent to the sponsors corp, those who come from the various employer and employee groups to sit on the sponsors corp, to do what's in the best interests of the plan as a whole or are they there to represent the interests of the groups that nominate them?

**Interjection:** On the sponsors corporation?

**Mr. Hudak:** Those who sit on the sponsors corporation.

**Mr. Melville:** For the sponsors corporation, the role, as Mr. Duguid mentioned, is a role of changing the plan or not changing it from time to time. So the members are representatives of the various constituencies that are responsible to appoint them in the transition provisions and presumably would come together and decide about making decisions from time to time with respect to the pension plan. The role of the administrator is to carry out, once those decisions are made, the day-to-day decisions on the plan.

**Mr. Hudak:** Management. I think I'm on the right line here. Then, by way of example, if I were the CUPE designate on the sponsors board—I know Mr. Ryan probably is interested to hear me say that is by way of example—and Mr. Hardeman were there as the—

**Ms. Horwath:** He's busy right now.

**Ms. Deborah Matthews (London North Centre):** It's unlikely he will be.

**Mr. Hudak:** Let's say, hypothetically, CUPE suggests that I be the CUPE representative down the road and Mr. Hardeman is the AMO representative down the road. Are we there to represent the interests of the group that we have been nominated by, for example? I'm not going to use an exact word. Am I there to look out for CUPE's interests and Mr. Hardeman for AMO's interests? Or are

we there to look out for the interests of the plan as a whole on the sponsors corporation?

**Mr. Melville:** On the sponsors corporation, I think the role of the member essentially is to—well, they presumably also have some duty to the sponsors corporation and its purpose is, from time to time, to make changes to the pension plan. Presumably, the member who represents a particular constituency will keep the interests of that constituency in mind. I can't say that it would extend to being a duty. They were appointed by that constituency and I think they would probably keep it in mind in acting on the board of the sponsors corporation.

**Mr. Hudak:** Fair enough. Would this amendment, if passed, change the duty of the rep to the sponsors corp in any way? Basically, if I understand it—I'm not saying it exactly the same way that you did, but ideally the intent is that those in the sponsors corporation would make decisions for the plan as a whole. They will obviously understand those who nominated them and they'll have that in their mind. But this amendment, if passed, would change that relationship, wouldn't it? Wouldn't it make them more beholden to the individual members who sent them there than to the plan as a whole?

**Mr. Melville:** It states that it would create a fiduciary responsibility, which is a kind of legal duty to the members, yes. It would change that relationship.

**Mr. Hudak:** Chair, I appreciate my colleague announced that this does represent a number of the groups that have called for this amendment. I think my concern—and I'd appreciate staff's help on this—is to make sure that we maintain that clear line between the admin and the sponsors corporation in making sure that there's no doubt the sponsors corporation members will reflect to a degree in their thinking the representatives of the party that they would come from, but at the same time we have to ensure that they bear in mind the interests of the pension members as a whole, as opposed to individual groups. Therefore, I cannot support Ms. Horwath's particular motion on 22(3).

**The Chair:** Any further comments or questions on this amendment?

**Mr. Hardeman:** Just to get it clear in my mind on this one, if the proposal before the sponsoring board was to create another supplementary plan, if this motion was passed, would it inhibit the ability of the labour side of the equation to vote not to have the supplementary plan? Would that be considered that they were then fulfilling their duty? Obviously they weren't looking after their representatives as number one. I'm just guessing.

**Mr. Melville:** It's a hypothetical question—

**Mr. Hardeman:** Exactly. I have no facts. I have nothing but hypothetical.

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**Mr. Melville:** It's a potential issue because the duty of a member of the sponsors corporation, if this amendment were in place, would be to the members, former members and others, but not to the employers if it doesn't say that. Presumably they have a greater duty to those members



and former members. I'm not sure if that answers your question.

*Interjections.*

**The Chair:** May I have some order, please. I can't hear the answer. Thank you.

**Mr. Hardeman:** Recognizing the fact then that if they created another supplementary plan, the employees would not have to participate if they decided not to, because it's not a mandated plan, but the employer, if the employee decided to participate in the supplementary plan, they would get twice as much—they would invest twice as much of their money but they'd also get twice the return. If that was good for their members, it would be pretty hard to fulfill this commitment on the board and not vote for the supplementary plan, wouldn't it?

**Mr. Melville:** I'm not sure I can answer that question. I'm sorry.

**Mr. Hardeman:** I think, Madam Chair, I'm going to vote against the amendment.

**The Chair:** Thank you for letting me know that, Mr. Hardeman.

Any further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Shall section 22 carry? All those in favour of section 22? All those opposed? That's carried.

Again, Ms. Horwath, you are working for your paycheque today. You're next up.

**Ms. Horwath:** I move that section 23 of the bill be amended by adding the following subsection:

"Employee representatives

"(1.1) The sponsors corporation shall ensure, in any bylaw referred to in subsection (1), that the entitlement of organizations that represent employees to choose members of the sponsors corporation shall be allocated among those organizations based on the number of employees who are members of the OMERS plan that each of them—

**The Chair:** Ms. Horwath—

**Ms. Horwath:** OK, I'll start over.

**The Chair:** Please. Sorry.

**Ms. Horwath:** "...the sponsors corporation shall be allocated among those organizations based on the number of employees who are members of the OMERS pension plans that each of them represents for collective bargaining purposes."

**The Chair:** Thank you. Mr. Duguid?

**Mr. Duguid:** We'll just vote against it if it can go quickly.

**Ms. Horwath:** If I can, really briefly, this again reflects the idea of ensuring that there is proportional representation, pretty much, on the corporation. That was the point of that resolution. It's one of those issues that we heard about in the hearings. Certainly it's not without controversy, but I think it's important to recognize that the number of members any organization brings to the table in terms of the OMERS pension plans should be receiving the appropriate proportional—the number of seats they have, on either of the corporations for that

matter, should be reflective of that. I think what the amendment says and does is pretty clear, so I'll leave it at that.

**Mr. Duguid:** Just briefly, the concern I have with this is it removes the ability of an employee group to have representation on the sponsors corporation if they're not represented by members for collective bargaining purposes. When you look at the proposed model, it includes representation for employees who are not members of trade unions, such as 20% of employees, of active members who are unaffiliated, non-union members. We're a little concerned—not a little concerned; a lot concerned—that these particular groups would lose their voice if we were to support this.

**Mr. Hardeman:** My concern is equal representation, representation by population. The parliamentary assistant mentioned those who are not represented by an organization. We would then have to have a rep for each one of those, because they need to be represented too. That would mean that we would need representatives, to make it fair, for every single member in the plan, which doesn't make a lot of sense.

I also have a problem, apart from those, as to the number of bargaining units that would be involved, some being very small. Then when you get into the larger groups, such as CUPE, they would have to have a great number of members in order to have fair representation on the board. I think this would likely create a rather large organization. I wonder if the member has any suggestions as to how we would deal with not having a 50- or 60-member board in order to get equal representation from all the bargaining units? And I suppose from the sponsors, from the employers too. They have the same problem. They all have different organizations, so they all want to be—somebody would leave. One of the municipalities would leave AMO, and they would no longer be represented by AMO—

**The Chair:** Mr. Hardeman, I think that the question has been asked. Ms. Horwath, do you want to respond to it?

**Ms. Horwath:** No, Madam Chair. Again, I don't think that the structure that the government put forward in the bill has addressed all the concerns of the stakeholders, and so perhaps there are ways of dealing with that issue. But I don't think at this committee that we're in the position to roll up our sleeves and develop a new structure. I think it's important to put on the record the concern about representation by population and leave it at that.

**The Chair:** Any further comments or questions?

**Mr. Hardeman:** A question through to the staff: In this section, if this resolution was to pass, does the board have the ability to change the numbers and the representation from different groups for their board?

**Ms. Hope:** The sponsors corporation would have the authority, over time, to change the composition of both the sponsors corporation and the administration corporation. So it will have that authority on an ongoing basis. The later sections of the bill set out an initial composition for each corporation.



**Mr. Hardeman:** So the initial composition would have to pass a bylaw to meet this requirement after the board was struck, if this was to pass?

**Ms. Hope:** If this were to pass and other sections of the bill were to remain as drafted, I believe what that means is the initial composition, as set out in the bill, would stay, but that any subsequent bylaw that the sponsors corporation would pass would need to be consistent with the language here.

**The Chair:** Any further comments or questions?

**Mr. Hardeman:** I guess I have some real concerns with passing a resolution like this which does not provide any direction to the corporation, that the second time around, here's what you have to do, but we had no idea how you would do that. We have concerns about how they would get a representative of everyone in the bylaw. I can't support this resolution.

**The Chair:** Any further comments or questions?

**Mr. Hudak:** There's no doubt that the workability of representation on the sponsors corp, particularly for the smaller employee groups, is problematic. I'm just looking forward through amendments to see—OK, so the government does have a motion, number 27, down a couple. I do apologize; I don't have this in front of me. How many different employee groups actually do exist that could have representation on the sponsors corp?

**Ms. Hope:** Sorry, did you say employee or employer?

**Mr. Hudak:** Employee groups.

**Ms. Hope:** Employee groups? We know that there are some 50-odd unions that represent members in OMERS and that about 20% of the members of OMERS are not represented by a union.

**Mr. Hudak:** Twenty per cent of the—

**Ms. Hope:** OMERS plan members.

**Mr. Hudak:** —OMERS plan members are not represented by—

**Ms. Hope:** By any union.

**Mr. Hudak:** Are they organized in a group currently, that remaining 20%?

**Ms. Hope:** Not for collective bargaining purposes.

**Mr. Hudak:** Right. But how about for seats on the sponsors corp?

**Ms. Hope:** The government does have motions to address that issue in this package.

**Mr. Hudak:** Ok. I guess I have to decide, is Ms. Horwath's motion superior to the status quo? And then we'll vote on that. Then, from there we would look at the government's motion and determine if that's superior to the status quo or to Ms. Horwath's presentation, depending on how the vote goes.

Under Bill 206 as it stands, without any amendments to the section, seats on the sponsors corp, how do you determine how the seats will be divided up among employee groups if they don't pass any bylaws themselves?

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**Ms. Hope:** The transitional provisions of the bill set out a composition for the sponsors corporation and provide for which sponsors shall select individuals to sit in the various seats on the sponsors corporation. Those

provisions are in place until December 31, 2009. So it will be incumbent on the sponsors corporation between the time this would come into effect and that date to pass a bylaw to adopt the composition they wish to have on an ongoing basis.

**Mr. Hudak:** Right. If the sponsors corp fails to do so—

**Ms. Hope:** So your question is if, by 2009, when these provisions are no longer there, they've passed no bylaw?

**Mr. Hudak:** Let's say the sponsors corp is hopelessly divided and cannot adopt a bylaw on future seats.

**Ms. Hope:** I think we rely on their responsibility to the corporate entity that they're a participant in to pass a bylaw.

**Mr. Hudak:** But there will be those who are, hypothetically, on the sponsors corp to start out with who may find they enjoy being on the sponsors corp, and there will be those who are not on the sponsors corp to start out with who would like to be on the sponsors corp.

*Interjection.*

**Mr. Hudak:** Nobody wants to be there? Hopefully groups would not act this way, but there may be an incentive under the bill, as currently constructed, to have the sponsors corp simply not adopt any new bylaw and maintain representation as set out initially in the bill.

**Ms. Hope:** Theoretically, yes.

**The Chair:** Any more comments or questions on this amendment?

**Mr. Hudak:** Certainly, Chair.

**The Chair:** Mr. Hudak.

**Mr. Hudak:** Some of the groups had expressed concern about rotating into positions and the mechanism that would be used as you went through the numbers that are in the different employee groups. I haven't had a chance to look up some of those particular groups, but there were those that were the smaller employee groups that expressed concern about a rotation mechanism. How is that to function?

**Ms. Hope:** As set out in the transitional sections of the bill.

**Mr. Hudak:** Right. I'm sorry. We haven't got there yet, I guess, but help me understand how that is supposed to work, because Ms. Horwath is proposing a different approach on employee representation.

**Ms. Hope:** Ms. Horwath's motion, as I understand it, sets a certain requirement for any bylaw that the sponsors corporation should set. It doesn't seem to address, to my read, any issue of a rotating amongst different employee groups. It seems to imply that all employee groups that represent members for collecting bargaining purposes would be entitled to some representation on the sponsors corporation in proportion to the number of members they represent.

**Mr. Hudak:** Sure. But what Ms. Horwath's motion is asking us to consider when we vote on it is, is this a superior change to the status quo under the bill, right? So if Ms. Horwath's motion fails, if it's unamended, this part of the act, how, then, will the smaller employee groups—I thought I remembered something in the



hearings about a rotation mechanism based on population of those employee groups.

**Ms. Hope:** There are provisions in the transitional section of the bill which address a rotational process for the small employee groups.

**Mr. Hudak:** Right. All I was trying to get at was how exactly that rotational basis works.

**Ms. Hope:** It's outlined in section 39 of the bill. It's described.

**Mr. Hudak:** OK. So could you help me understand, then, if the bill is not amended, as Ms. Horwath suggests, and the bill proceeds in an unamended form in this section, how a rotation mechanism functions.

**Mr. Duguid:** On a point of order, Mr. Chair: I think the rotation mechanism is part of other motions later in the bill, other sections, so we're going well beyond this particular amendment at this point in time.

**The Chair:** Mr. Hudak, have you got enough information yet to determine whether the superiority of this amendment will supersede the government motion or not?

**Mr. Hudak:** I don't think so, Chair.

**The Chair:** I just wondered where we were.

**Mr. Hardeman:** We haven't gotten to the government motion yet.

**The Chair:** I know we haven't.

**Mr. Hardeman:** We don't want to be debating a motion that's not yet on the table.

**The Chair:** Clearly not. Mr. Hudak, you have the floor.

**Mr. Hudak:** But in the absence of some debate on transitional powers under section 39—

*Interjections.*

**The Chair:** I don't want any more debate. This is taking long enough as it is. Mr. Hudak, do you have a question for staff?

**Mr. Hudak:** Well, I was trying to best understand how the transitional mechanisms work.

**The Chair:** How about Ms. Horwath? She has asked to speak. While you're looking through your notes, maybe she could clarify for you.

**Ms. Horwath:** I think my next motion actually gets rid of any transitional period anyway, so you can support both.

**The Chair:** Thank you for being helpful. I appreciate that.

**Mr. Hudak:** So we can discuss, then, sections 38 and 39 under Ms. Horwath's next motion, since that section does refer to them.

**The Chair:** No, I think we're going to have to do one at a time. So you're going to have to make a decision on the amendment that's in front of you right now.

**Mr. Hudak:** No, I understand that, Chair. I do want to explain, though, that the transitional sections, 38 and 39, are relevant as we discuss sections 22 and 23. In fact, Ms. Horwath's motion 26 addresses subsection 23(2), which refers directly to those transitional sections.

Mr. Duguid says that you have to debate the bill in order. Fair enough. You have to go through a bill in some

order to get through it. But sections 38 and 39 are surely relevant for the discussion on section 23. You can't treat section 23 differently than sections 38 and 39—you can't treat them separately.

Anyway, in the absence of debate on sections 38 and 39—

**The Chair:** Mr. Hudak, would you like some other clarification? I think staff is willing to try to assist you in your evaluation.

**Ms. Macnaughton:** This particular amendment deals only with when there will be a bylaw after the transitional provisions have run their course, and the transitional provisions are sections 38 and 39. So they're mutually exclusive.

**Mr. Hudak:** Thanks. I'm not going to belabour the point, but if you do change—as I said earlier with respect to bylaws, my earlier questions were, if the sponsors corp does not make a bylaw change, then what transpires? Transitional provisions deal with the issue of seats on the sponsors corp as well. I'm more than willing to talk about the transitional issues in subsection 23(2), but in absence of a full debate on that, I don't think I could support Ms. Horwath's amendment as it stands on its own without fully working through its impact on transition in bylaws from the sponsors corp.

**The Chair:** Seeing no further questions or comments, shall the amendment carry? All those in favour? All those opposed? That's lost.

Ms. Horwath, you're on deck again.

**Ms. Horwath:** I move that section 23 of the bill be amended by adding the following subsection—oh, wait; I'm on the wrong one. Sorry.

I move that subsection 23(2) of the bill be struck out. And I can tell you why, if you like.

**The Chair:** Please do.

**Ms. Horwath:** The point is that in the process of going through the final reading of the bill—so we'll go through second reading debate and we'll go through final reading of the bill and then we'll wait for royal assent to take place—during that whole process there's plenty of time for the sponsors corporation to be set up and for the various stakeholders to appoint their members. There's really no need for the transitional period. There's no reason why those parties can't have their appointments ready for proclamation of Bill 206.

The other piece of it, then, is that you have this long time frame whereby the sponsors corporation could, theoretically, implement bylaws that might not be satisfactory to the majority of those people who would be interested.

Everybody who's interested is aware that this bill is going through the process; it's going to be a long process, thanks to Mr. Hudak. No, I'm just kidding. It's going to be a long process because it's a difficult bill and it's an important bill. There's a lot at stake in this bill, and it's been a long time coming, quite frankly. People have been asking for this.

1700

It's funny, because some of the stakeholders said, "We don't know where this came from. Nobody's been asking



for it.” That would have been the employer side. On the other side, pretty much every stakeholder we heard was saying that they have been desperately wanting this legislation—not this particular legislation, but for the OMERS pension plan to be devolved to the stakeholder level.

What this does is say, “Hey, if you are going to be doing this, let’s just do it right away. Let’s not set in some transitional period. Let’s get things up and moving in the interests of the stakeholders immediately upon proclamation.”

**The Chair:** Any further comments or questions?

**Mr. Duguid:** What this does as well is—it could vary, as it gives the sponsors corporation the ability to alter its composition in its first year. We don’t have a problem with that. The problem we have is that there is no default if they aren’t able to agree on a changed composition at the end of that one year. So that’s the difference between this motion and the government motion, and as such, we won’t be supporting this one. Subsequently, we’ll be supporting one that’s similar but different.

**Mr. Hardeman:** Maybe I’m on the wrong amendment here, but the comments from the parliamentary assistant that the government has one similar but different—how do you have a motion that’s similar and different when this motion just says subsection 23(2) of the bill shall be struck out?

**Mr. Duguid:** The difference is that we strike out that motion as well, but we provide a process for default composition if the sponsors don’t agree upon a changed composition after one year.

**Mr. Hardeman:** Oh, OK. It seems fairly simple: If it’s similar, it’s the same. Striking out is striking out, regardless of how you do it?

**Mr. Duguid:** No, it adds more to it.

**Mr. Hardeman:** I’m just—

**The Chair:** Mr. Hardeman, would you please go through the Chair and signal to me, because I’m trying to keep an eye out for who wants to talk. Mr. Hardeman, you have the floor.

**Mr. Hardeman:** I’m concerned about the timing in the resolution. We’ve noticed it in other areas. There may be a lot of time, because it takes a long time for legislation to be approved and implemented. At the same time, the people who are getting ready for new organizations to be put in place really can’t make those preparations and do it properly before the final i is dotted and t is crossed.

We see it in health care, where we have the LHINS which have been up and operating and there’s still no legislation that actually allows them to be there. It’s the example of the other way, the length of time it takes to make these things happen. So I commend the legislation and the government for putting something in there for a transitional period, because obviously none of this happens overnight.

I don’t think you can pass a piece of legislation that requires that everybody will be ready or assumes that everybody will be ready to be appointed and get into

operation when the bill is passed and gets royal assent. I support that part of it. I don’t think we can afford to just strike it out and not have a transitional process in place.

**The Chair:** Any further comments or questions?

Seeing none, all those in favour of the amendment? All those opposed? That’s lost.

Mr. Duguid, you have the next motion.

**Mr. Duguid:** I move that subsection 23(2) of the bill be struck out and the following substituted:

“Initial composition

“(2) Despite subsection (1), the composition of the sponsors corporation is determined as follows for the following periods of time:

“1. The composition of the sponsors corporation is as determined under section 38 for the period commencing on the day that subsection 22(1) comes into force and ending immediately before the first anniversary of that day or when the sponsors corporation passes a bylaw under subsection (1), whichever is earlier.

“2. If the sponsors corporation has not passed a bylaw under subsection (1) on or before the day that is the first anniversary of the day that subsection 22(1) comes into force, the composition of the sponsors corporation is as determined under section 39 for the period commencing on the first anniversary and ending when the sponsors corporation passes a bylaw under subsection (1).

As I said before, this motion would allow changes to the initial composition of the sponsors corporation in that first year, upon the sponsors corporation passing a bylaw, so that they can re-establish the composition of the corporation in that first year of operation. It allows them to make those kinds of decisions. However, if the sponsors do not pass a composition bylaw in the first year, the composition outlined in section 39 of the bill would apply under this particular motion.

**The Chair:** Further comments or questions?

**Mr. Hardeman:** I’m afraid we’re going to have to try it again, Mr. Parliamentary Assistant. I don’t understand it.

**Mr. Duguid:** Just briefly: In the current bill, there’s not an ability to change the composition of the sponsors corporation. This will allow for the sponsors corporation to have the ability to amend their composition should they pass a bylaw and agree to it. We agree with that. If at the end of the first year they haven’t passed a new sponsorship composition, what’s proposed here in section 39 will then apply until they decide in the future to do it. So if they haven’t been able to agree to anything, they’ll stick with what they have.

**Mr. Hardeman:** So you’re making the assumption that it’s possible that the corporation will decide that once they’re appointed, they’ll be ready—as Ms. Horwath suggested, because they’ve been waiting for this—and able to pass a bylaw in six months. In six months, they could then structure a new board, and they wouldn’t have to wait till the end of the year before that board could take over its operations.

**Mr. Duguid:** Yes. The sponsors corporation may decide they want to amend their composition, and this gives them the ability to do that if they pass a bylaw.



**Mr. Hardeman:** In setting up the corporation with a bylaw, is that still predicated on a certain level of employee-employer representation?

**Mr. Duguid:** Yes. It still has to be 50-50, employee-employer.

**Mr. Hardeman:** That's predicated on the fact that they can't have a bylaw that takes the—

*Interjection.*

**Mr. Hardeman:** All of a sudden, I see we have a problem. I see that staff would like to answer a question.

**Mr. Duguid:** They may be able to—

**The Chair:** Can I ask that you go through the Chair, please? This is becoming a conversation, but you really should be going through the Chair.

**Mr. Duguid:** They may be able to alter that, but I don't think you're going to see the employers or the employees give up 50% representation on either corporation, let alone the sponsors.

**The Chair:** Staff, do you have some additional information? No, they don't.

Did you have any more questions?

**Mr. Hardeman:** Yes, I would like that question answered by staff.

**The Chair:** I don't think they had any additional information on this issue. I think they were satisfied with the answer Mr. Duguid gave. They were nodding. Am I wrong?

**Mr. Hardeman:** I quit listening to the speaker because I was waiting for staff to answer it, so if staff could repeat it for me, I'd much appreciate it.

**The Chair:** Maybe staff could repeat what Mr. Duguid said.

**Mr. Duguid:** It would be preferable, if a member's asking a question, that they listen for the answer in the future, and maybe we can speed through the hearings a little quicker.

**The Chair:** Ideally, that would be the case, Mr. Duguid. Staff, could you respond to Mr. Hardeman's question, please?

**Ms. Hope:** What Mr. Duguid referenced was that it will be up to the sponsors corporation members to determine what the composition would be, should they wish to revisit what is in the bill in the transitional section, and so it would be their decision on how that would be structured. But it would be difficult to imagine a context in which employers or employees would agree to a composition that did not involve equal representation of both sides.

**Mr. Hardeman:** If I could go one step further, then: The passing of the bylaw is in fact predicated on just a straight majority vote of the board.

**Ms. Hope:** Correct.

**Mr. Hardeman:** Since we have exactly a 50-50 split, is it possible that if someone was ill, we could actually pass a bylaw to change the proportion of labour and management?

**Ms. Hope:** I just want to double-check something. The reference to the decisions of the sponsors corporations requires an affirmative vote of a majority of its

members. Regardless of whether people were in attendance or not, a majority of members would need to support a bylaw in order for it to pass. It's not a majority of those present at a meeting, it's a majority of members.

**1710**

**Mr. Hardeman:** That's to say, then, that this board is going to operate almost totally differently than any other board, where it's based on—the vote count is not who's present, but the vote count is the majority of the members.

In the Legislature, there are 103 members, but you're suggesting that the majority should be, then, 53. If that were the board for this corporation, the vote that would be required to make this change would be 53, regardless of who was in the chamber?

**Ms. Hope:** If this principle were being applied, yes.

**Ms. Horwath:** It piqued my interest because—I couldn't say a reason, actually. So that would mean, then, that the mechanisms for that kind of a vote would be through a proxy, for example. If someone couldn't attend, they could do a proxy or some other kind of methodology to make sure that those votes were counted. Is that how it goes?

**Ms. Hope:** The bill doesn't address issues like proxy, but those would be issues that the corporation could address through its own bylaws, what rules it might be prepared to have around use of proxy.

**The Chair:** Any further comments or questions?

**Mr. Hardeman:** Are you suggesting that the corporation can decide how they decide they're going to call a vote on certain issues? Like you say, there's nothing in the bill that says how we're going to decide the majority of the members. They could just say, "Why don't we have it so you can just call in your vote?"

**Ms. Hope:** As a corporation, they would be able to set bylaws to determine how voting could occur, whether proxy votes could be used and those sorts of things. That's within the normal scope of a corporate entity, to set its own bylaws.

**Mr. Hardeman:** So this bylaw, then, could actually come up. Maybe that's where we get to the point of the corporation only having to meet once every three years, because in fact they could do everything by telephone, according to the bylaw. They could pass a bylaw that says, "We only have to meet once every three years, and the chair will from time to time call around"—do a conference call or something—"to make decisions." Is that—

**Ms. Hope:** You're speculating a bit on what they might decide to do. They would have to be consistent with the law, so whatever requirements are set out in the bill. Obviously, they couldn't set bylaws that would contradict those parameters. But beyond the parameters set out in the bill and any other legal requirements they might be subject to in things like the Pension Benefits Act or other laws of Ontario, they would be free to set their own bylaws.

**The Chair:** Mr. Hardeman, do you still have questions?



**Mr. Hardeman:** Yes, if I could.

Help me understand again. The parliamentary assistant mentioned that this amendment really just opens it up to speed up the process if they want to become self-governing before the first anniversary. In your opinion, is that a likely scenario?

**Ms. Hope:** I couldn't speculate on how likely it would be, but I think on the substantive issue you are right. The substantive issue that this amendment addresses is to permit them to pass a bylaw in the first year of their existence. As currently drafted, they could not pass such a bylaw until after the first anniversary of their coming into being. I think the feeling on the government's part was that that was not a necessary restriction and that it should be removed.

**Mr. Hardeman:** Isn't it reasonable to assume that they would gain some comfort and knowledge of how the corporation works and what their responsibilities are during that first year or so, that the corporation would be better served if they didn't cast it in stone before the first year was up?

**Ms. Hope:** I can't comment on how they might or might not be comfortable with making decisions at different points in time.

**Mr. Hardeman:** Maybe this is one the parliamentary assistant would be better to answer, if I could, Madam Chair, refer it to the parliamentary assistant. That's a political question.

**The Chair:** Are you going to listen to the answer this time?

Mr. Duguid.

**Mr. Duguid:** Without a crystal ball, I don't think anybody knows how independent, autonomous organizations are going to make their decisions. In the end, they have a structure they have to follow. We're just giving them some flexibility in that first year. Should they agree to move in a particular direction, we're giving them the ability to do that.

**Mr. Hardeman:** Could you tell me what the driver is behind giving this opportunity? Obviously, when the bill was originally written, it was deemed that one year was an appropriate phase-in period to go from the present structure to the new structure. What prompted the need for this amendment to say that this could be done in a shorter time?

**Mr. Duguid:** This was an amendment that was requested by a number of stakeholders who thought it was something that would be reasonable and that a year in abeyance and not being able to make these kinds of decisions could, at some point in time, restrict their ability to function as well as they think they could, as quickly as they could.

**Mr. Hardeman:** You said that we got that from a number of stakeholders. Are these stakeholders who made presentations or stakeholders who have spoken to the ministry outside of the committee hearings? I don't remember a lot of it coming forward.

**Mr. Duguid:** They would be stakeholders that made presentations. I don't recall whether this was a point they

mentioned specifically in their presentations or a point they mentioned in meetings with ministry staff and others, potentially even myself, prior to this coming forward. At some point in time, these—

**Mr. Hardeman:** I would be interested to know. When you mentioned that there were people coming forward with a request for this, I'd like to know who, because I spent a lot of time listening to presentations and I didn't hear any of that. I just wondered where that came from. If I could get that information, I'd much appreciate it.

**Mr. Duguid:** Sure. I'd suggest the Association of Municipal Clerks and Treasurers of Ontario was one group that specifically requested this; the Municipal Retirees Organization of Ontario was another one. There may have been others, but I know for sure that they're two that requested it.

**Mr. Hardeman:** That's fine, thanks.

**The Chair:** Any further comments?

**Mr. Hudak:** To the parliamentary assistant: In terms of those who supported this motion, were there any who opposed this change?

**Mr. Duguid:** I'm aware of none.

**Mr. Hudak:** I think what's important to understand too is the government's intent on its initial appointees to the sponsors corp. What's the process the government is going to undertake on the initial representatives who are going to sit on the sponsors corporation?

**Mr. Duguid:** I'm sorry? You're going to have to explain that question a little more.

**Mr. Hudak:** The bill, as it is, sets out the initial sponsors corp, and they're delineated on certain employer-employee groups that they represent. Before we change that mechanism, what's the government's intention in terms of how you determine who the first individuals are going to be?

**Mr. Duguid:** The individuals will be appointed by the organizations named in the bill that are given the ability or the opportunity to appoint representatives on the original founding corporations.

**Mr. Hudak:** So basically, CUPE, by way of example, would determine—is it two members in the sponsors corp for CUPE?

**Ms. Hope:** Three.

**Mr. Hudak:** Three members of CUPE. So you would basically go to CUPE Ontario and ask them to name their three representatives?

**Mr. Duguid:** That would be my understanding, yes.

**Mr. Hudak:** Is there a time frame or a mechanism to ensure that they're brought forward in a timely manner?

**Mr. Duguid:** If they want their voices to be heard, they'll appoint their members when the corporations come forward.

**Mr. Hudak:** Maybe a better way of asking is, have you already been talking to the different groups about selecting their members and the qualifications of those members, that sort of thing?

**Mr. Duguid:** I think it would be premature for us to be talking to the various groups or even influencing the various groups in terms of whom they should or



shouldn't be appointing. That's the decision of the groups.

**Mr. Hudak:** Is it the government's intention to give certain standards for members, or are the employer-employee groups wide open in terms of whom they would select as the sponsors committee representatives?

1720

**Mr. Duguid:** I'm not aware of any standards that are set. I think, though, the groups know, having participated in the current OMERS structure, that it's very important that people who are on these boards are qualified.

**Mr. Hudak:** Maybe through staff: The sponsors corp has yet to exist, but with the current administrative structure of OMERS, how does the government go about currently determining which members sit on the admin corp?

**Ms. Hope:** There's a regulation under the OMERS act that sets out the structure, the composition. It has been the practice of successive governments to seek nominations from a variety of the stakeholder groups in making appointments. The province also has policies with respect to the whole public appointments process that would also factor into any LGIC appointment process, including the current OMERS board.

**Mr. Hudak:** For example, is somebody who is sitting on the admin corp recommended by the particular groups? Is there somebody currently on the admin corp who's an AMO representative?

**Ms. Hope:** You're referring to the administration corporation in the bill?

**Mr. Hudak:** Exactly; currently.

**Ms. Hope:** For the OMERS board presently, the regulation sets out a certain number of positions that must be directors of an OMERS employer. It can be the practice of the government to go to groups such as AMO. It's a matter of policy to go to groups like that for nominees to fill those positions presently.

**Mr. Hudak:** Basically it's the intent to follow a similar process on the sponsors corp?

**The Chair:** Any further comments or questions?

**Mr. Hudak:** That was a question for the parliamentary assistant.

**The Chair:** I couldn't tell it was a question.

Mr. Duguid.

**Mr. Duguid:** To the best of my knowledge, that's the intent. I don't know if it's in the legislation, but perhaps we could direct that to staff to see if they're aware of anything specific on this.

**Mr. Hudak:** Sure.

**Ms. Hope:** The legislation does make clear that that first sponsors corporation will be appointed by LGIC; however, the Minister of Municipal Affairs and Housing is on record that it would be the government's intention as a matter of policy to make such initial appointments based on nominations from the groups, as outlined in the composition in the bill. If they are indeed LGIC appointments, as is laid out in the bill, then they would be subject to any of the policy parameters that government has in place with respect to making public appointments.

**Mr. Hudak:** If it's devolution, as the government says, true devolution would mean that the individual employer/employee groups would choose representatives on the sponsors corp. There are those who argue that it's not really devolution, that this piece of legislation is actually very directive as opposed to devolving the authority.

It's a very important decision, off the top, who will sit on the initial sponsors corp. Whether this amendment passes or not, it will play an important role at the beginning in setting up bylaws and such. Would you characterize this as devolving the—

**The Chair:** Who is this question for?

**Mr. Hudak:** Maybe we could ask the parliamentary assistant. Are you devolving the decision as to who makes appointments on the sponsors corp with the initial set-up of the sponsors corporation?

**Mr. Duguid:** I think the response from staff was clear, that the minister has indicated that he would be abiding by the recommendations made by the various parties for this initial set-up of the corporations. Keep in mind, as we've been discussing, even during the first year of operation, the sponsors corp would have the ability to amend their composition at any time.

**The Chair:** Mr. Hudak, you had another question?

**Mr. Hudak:** Yes, I do. Thanks.

My understanding of the intent is, the minister has said that he will work with the different groups—the employer and employee groups—and they'll have a mechanism to determine who their reps would be who would sit on the various chairs of the sponsors committee. This is sort of the intent of the minister. Has that process begun? Have the various groups that are going to be on the sponsors corp begun that process of determining their members?

**The Chair:** Are you asking staff, or are you asking Mr. Duguid?

**Mr. Hudak:** Staff.

**The Chair:** You're looking at staff, but I'm not sure that it's a staff answer.

**Ms. Hope:** I believe Mr. Duguid already provided an answer to that question.

**The Chair:** Thank you. Mr. Duguid?

**Mr. Duguid:** I can repeat it: No, it would be premature to be discussing appointments on a board that hasn't yet been approved.

**Mr. Hudak:** But the government's intent, then, if the bill passes, is to begin that process, and then take it through cabinet. They have to be LGIC appointments, if I understand. Will the LGIC appointments be able to be called by the agencies committee for interviews?

**Mr. Duguid:** I'm not aware of that.

**Mr. Hudak:** This is important. I appreciate that the groups will bring it forward. I'm sure the groups will do very good due diligence on the right members to sit on the sponsors corporation. The minister doesn't have to do that, but he's made the declaration that he will consult. Good for him; I'm glad to hear that. I'm sure we'll see that undertaking completed. The process, then, will bring



it to cabinet, and cabinet will decide whether the groups' nominations would sit on that initial sponsors corp or not.

There is an important check and balance in our system, and that's the government committee on agencies. Some members here have sat on that committee. Mr. Rinaldi doesn't like that committee.

**The Chair:** So who was your question for, Mr. Hudak?

**Mr. Hudak:** It's part of debate, Chair.

**The Chair:** I'm just wondering. I can't tell questions from just general conversation any more.

**Mr. Hudak:** I was trying to remember if Mr. Rinaldi, for example, had sat on the agencies committee.

**Mr. Lou Rinaldi (Northumberland):** Wrong.

**Mr. Hudak:** OK. I couldn't remember.

Ms. Horwath, for example, is the Vice-Chair of the agencies committee, and I chair that. There's an important check and balance within our system to ensure that Lieutenant Governor in Council appointees go through a due process that's made up of all three, right? We have members of the government side, the opposition side and the third party. They may or may not be called to come before the committee for a brief interview, and then the committee would vote to determine whether they thought that was an appropriate fit to a particular position or not. There are exceptions to that if it's not an LGIC appointment, there are exceptions to that for reappointments, and there are exceptions to that for appointments that are less than a year.

This is an important bill. These appointments will be going through cabinet. It seems to be reasonable that the agencies committee, if members chose to, could call an appointee for an interview.

**Mr. Duguid:** Madam Chair, I guess that's a question.

**The Chair:** I can't tell if it's a question. Is that a question to Mr. Duguid?

**Mr. Hudak:** Well, I was just seeing if anybody else wanted to—

**The Chair:** Jump in?

**Mr. Hudak:** —jump in, and if they agree with me or not.

**The Chair:** OK, you've asked the question. Mr. Duguid, would you like to respond?

**Mr. Duguid:** The member can rest assured that all proper procedures will be followed in these appointments.

**The Chair:** Mr. Hudak, you had another question?

**Mr. Hudak:** Just to be clear: If the agencies committee wanted to call one of the initial appointments to the sponsors corp to the committee, the government would oblige?

**Mr. Duguid:** As I said, I'm sure all proper procedures will be followed in making these appointments, as would be expected of the minister and the government.

**Mr. Hudak:** I guess I'm looking for just a very simple yes or no. I'm not sure; maybe he is saying yes. But I think it's important that members on the agencies committee, whether they be on the government side or opposition or third party, would maintain that right. It's

respected in all other bills that have LGIC appointments, as far as I know. I do recognize that this is a bit of different mechanism, that the groups will give their recommendations to the minister, who would then take them through cabinet. I recognize that that's a slightly different mechanism than the standard. All that being said, I still think it's important that the committee retain that right to call forward members—whatever group they represent. I'm asking the parliamentary assistant for a clear yes or no: Can I have that undertaking that the ABCs committee could call these appointments?

**The Chair:** Mr. Hudak, I think you've asked the question twice. I think you've had an answer you're not satisfied with. If you keep asking it, I don't think you're going to get a different answer, but I will try one more time.

**Mr. Hudak:** Just a yes or no, Chair, would be fine.

**The Chair:** I'm not sure you're going to get it, Mr. Hudak.

Mr. Duguid.

**Mr. Duguid:** I take under advisement the suggestions being made by the member. As I said, all appropriate procedures will be followed in making these appointments, as with all government appointments.

**The Chair:** Any further comments or questions?

**Mr. Hardeman:** Just for clarification, because I want to make sure I understand these appointments: Are they made by order in council, or are they actually ministerial appointments?

**Mr. Duguid:** I think that question has been answered.

**Mr. Hardeman:** Well, maybe you could try again.

**Mr. Duguid:** Well, maybe you can pay attention better next time.

**Mr. Hardeman:** Oh, thank you. Madam Chair—

**The Chair:** Committee, I'm going to try to restore some order. We have a lot of material to cover, and I understand that the opposition is trying to clarify information. Perhaps staff could answer this question?

1730

**Ms. Hope:** These are Lieutenant Governor in Council appointments.

**The Chair:** Any further comments or questions? Mr. Hudak.

**Mr. Hudak:** Lieutenant Governor in Council appointments would be the same thing as order in council appointments, just for clarity on the record.

I guess the point I'm getting at is that I think it's important for the committee to retain that right to call forward members for interviews. My colleague, Ms. Horwath, may agree with me, and members may very well not. They'll say, "Well, you know what? AMO picked the right rep, and if one of the other groups pick the right rep, we're not going to intervene," but I think they should retain that right.

There are exemptions to the ability of the committee to call representatives. Those exemptions are if service is less than a year or if it's a reappointment. Obviously, reappointments would be moot in this point, right? There's no such thing as a sponsors corp, so there would



be no such thing as a reappointment to this corp when it starts up. If you have an appointment that is less than a year, the committee would not have the right to call them. That's why I thought it was important to try to get the confirmation from the parliamentary assistant that the government would allow these individuals to be called forward.

Let me make sure I understand this: If the composition of section 23 stands without amendment, the appointments will be for a three-year term, unless they pass a bylaw to change that?

**Ms. Hope:** It's a one-year term.

**Mr. Hudak:** So if the sponsors corp does not pass a bylaw to change its structure, do those original committee members remain on the committee until that happens, or would it go through another LGIC process?

**Ms. Hope:** There's no provision for further LGIC appointments beyond the initial year.

**Mr. Hudak:** So if I'm appointed as the CUPE rep, so to speak, if CUPE supports me, the Lieutenant Governor in Council agrees and the OIC occurs, I'll sit on the sponsors corp. The sponsors corp has some time to make bylaws respecting membership. If a year passes and these bylaws are not made, what's my standing on the committee?

**Ms. Hope:** The sponsors are responsible for further appointments on the basis of the transitional provisions set out in the transitional sections of the bill.

**Mr. Hudak:** The example helps me understand whether or not an individual could be called to the agencies committee. So if I'm the CUPE representative, I'm appointed initially through an order in council. The sponsors committee then fails to make a bylaw respecting membership on the committee within the first year. Help me to understand what would then happen.

**The Chair:** Mr. Hudak, can I ask, are you speaking to the motion, the amendment that's on the floor? I understand you're trying to clarify, but we're really talking about the composition in this amendment.

**Mr. Hudak:** Absolutely.

**The Chair:** I just want to make sure we're still talking about the amendment.

**Mr. Hudak:** Absolutely, Chair.

**The Chair:** If you can structure your question based on what's in front of us, I think it would be easier for me to follow what you're asking.

**Mr. Hudak:** The amendment in front of us, 23(2), would amend the existing 23(2) of the act, which deals with the initial composition of the sponsors committee set out in the transitional provisions of sections 38 and 39. What I'm trying to understand is the due process: Will it be followed? Will the agencies committee, which has had this right in this place for some time, still be able to call forward these individuals for an interview if they so chose? This particular amendment before us, if passed, would change that, and actually could make it a shorter period of time for the composition to change. So I'm trying to understand—

**The Chair:** I think you've made an assumption that I don't think staff agrees with.

**Ms. Hope:** The initial appointments made by LGIC are for the one-year period, regardless of this amendment or not. What this amendment in effect does is give that initial sponsors corporation the capacity to pass a bylaw in that first year that would alter the composition on a go-forward basis.

**Mr. Hudak:** Exactly. So it's conceivable, then, that the appointees would be less than a year sitting on that committee. The structure could change, and new appointees would come forward.

**Ms. Hope:** It is theoretically possible, if the sponsors corporation so decides, but that doesn't change that the initial appointments would be for a one-year period.

**Mr. Hudak:** OK. So if I follow the logic, no matter what this amendment says, the individuals who get an order in council to be an initial part of the sponsors corp could be called by the agencies committee?

**Ms. Hope:** I don't think that's a question I'm in a position to answer.

**Mr. Hudak:** Chair, is there anybody who could—I know you and the clerk are looking through the standing orders, which describe the agencies committee and when they can call individuals to come forward. This comes up from time to time, no matter which party is governing and which are in opposition, but sometimes appointees—

**The Chair:** Maybe I could help you with clarification. It reads here: "Standing committee on government agencies which is empowered to review and report to the House its observations, opinions and recommendations on the operation of all agencies, boards and commissions to which the Lieutenant Governor in Council makes some or all of the appointments, and all corporations"—and this is the most important language—"to which the crown in right of Ontario is a majority shareholder...." It won't be a majority shareholder, should this legislation pass.

**Mr. Hudak:** I'm sorry, Chair. Could I see it one more time?

**The Chair:** Yes. Does anybody else have any other questions?

**Ms. Horwath:** So that means the answer is no.

**The Chair:** I think the answer is no. It's a long-winded way to say no. Any other comments or questions?

**Mr. Hudak:** So the standing committee on government agencies, as you said, is "empowered to review and report to the House its observations ... " etc. "agencies, boards and commissions to which the Lieutenant Governor in Council makes some or all of the appointments, and all corporations to which the crown in right of Ontario is a majority shareholder...."

I'm still not clear that those are mutually exclusive, and I think the Lieutenant Governor in Council makes appointments—my reading of that had been that wherever the Lieutenant Governor in Council makes appointments for more than one year, they could be called, whether they're a majority shareholder or not.



That was my understanding—I could be wrong—which brings me to the main point, that there's a lack of clarity right now if these individuals can be called or not.

**Mr. Rinaldi:** It's very clear. What part don't you understand?

**Mr. Hudak:** Well, the parliamentary assistant said that all proper processes or whatever would be followed.

**Mr. Duguid:** That's clear.

**Mr. Hudak:** Right, so if the—

**The Chair:** I don't really want to debate back and forth on this issue. I think Mr. Hudak is attempting to find clarification. You have the floor.

**Mr. Hudak:** So if the process is that they would be there for one year, no matter what, if this amendment passes or not, and the Lieutenant Governor in Council makes the appointments—and I think regardless of whether it's a majority shareholder or not—I think those are two different things. I think they're mutually exclusive, as opposed to meeting both necessary conditions for an appointment to be called.

The parliamentary assistant says due process will be followed. What makes me a bit nervous is that that means he's actually telling me no, that they won't be called before the committee. That's what I worry about in interpreting the parliamentary assistant's undertaking to us.

I just want to state for the record that I think, under the circumstances, the way to this bill that's before us today and the complexity of it—in fact, that individuals in that initial sponsors corporation will have tremendous responsibility to manage and make decisions on this \$36 billion in pensions with so many different employee-employer groups. Those individuals, irrespective of how they get the LGIC appointment, should be subject to review by the committee, if the committee so chose.

I don't think I can make a motion to that. I guess we could research whether that motion would be in order or not, Chair, but I do think that if we did have the undertaking from the parliamentary assistant or the minister, while this committee is sitting, that those appointments could be reviewed, I would sit much more comfortably that full due diligence would be undertaken.

1740

**The Chair:** Are you asking a question, Mr. Hudak? I'm not sure in that preamble where it was a question.

**Mr. Hudak:** I've asked the question; I'm just not satisfied with the answer I received. So I was more or less hoping I'd hear from some members at the table that they think I'm right that, regardless of the proper process—language that the parliamentary assistant described—these appointees should be able to be called, not that they should be called necessarily but it should be up to the members of the agency's boards and commissions, the agency's committee of government, to determine whether they should be called or not. We should be very hesitant about creating any new groups that can circumvent that process, at least at the outset.

**The Chair:** I think you've had your answer, Mr. Hudak. I believe there are no further comments or questions on this amendment.

**Mr. Hudak:** Would anybody over on my—

**The Chair:** No. You've really made a very valiant attempt, but I don't think you're going to do that.

Any more comments or questions? I don't see any.

All those in favour of the amendment? All those opposed? That's carried.

Mr. Duguid, I believe you have the next amendment.

**Mr. Duguid:** I move that subsection 23(3) of the bill be struck out and the following substituted:

“Eligibility

“(3) A person who is a member of the administration corporation is not eligible to hold office as a member of the sponsors corporation or to be appointed to any committee established for the purpose of advising the sponsors corporation.”

This is to prevent members of the administration corporation from being appointed as members of an advisory committee established by the sponsors corporation. It ensures a clear separation between members of the administration committee, which is the fiduciary body, and any committee of the sponsors body.

**The Chair:** Any comments or questions?

**Mr. Hardeman:** I'm not sure whether I dare ask the parliamentary assistant again, because I've had a long day and he doesn't want to answer questions any more.

**Mr. Duguid:** On a point of order, I have answered questions very well and specifically.

**The Chair:** Mr. Hardeman, I'm not going to allow this debate. You can ask your question, but you do have to listen to the answer.

Mr. Hardeman, your question.

**Mr. Hardeman:** Thank you very much, Madam Chair. I thought I was asking a proper question.

I'm a little concerned about the eligibility. I don't necessarily disagree with the separation of the two. What we heard very clearly in the presentation from the OMERS board was the fact that we should have the separation. But I don't know how, with passing a motion like this, we deal with the fact that it's not autonomous any more. We have the board, supposedly autonomous, that can pick who they like, when they like in the bylaw; now we're saying there are certain people who can't be picked for certain things. I don't know how one deals with the autonomy, putting something like that in there. Maybe the parliamentary assistant could explain that.

**Mr. Duguid:** It's not about certain people or appointing certain people, as the member indicated. It's about making sure that you don't have people sitting on both boards, holding both offices. Really, the responsibilities must be separate. There's a fiduciary responsibility and then there's the sponsors role. It's very important and most, if not all, stakeholders probably would agree that that's—I shouldn't say “all.” Most stakeholders would have agreed that that's an important principle.

**Mr. Hardeman:** Going back to previous discussions we've had here this afternoon and brought forward by other amendments, there's been a concerted effort to bring the two bodies together to have a better communi-



cation method between the two. Here, we have one that's actually making sure that that isn't possible in any way, shape or form, that no one can be in both places serving a similar task for two totally different corporations. In the bill, it totally divides the two responsibilities. I find it hard to understand, if one was serving on a committee of the other board, what difference that would make. Again, it's not so much as to who they are or the people, but this is taking away autonomy from the board as to how they want to do their business. The person who is there may very well think that's the most appropriate individual or group of individuals to do the task, but because they're on the other board, they can't be involved. I just can't understand the logic of saying, "We want you to have autonomy, but this is how we want you to run the corporation."

**Mr. Duguid:** In answer to that question, I think the member has to determine for himself whether he agrees with the principle of separation between the fiduciary responsibility and the sponsors responsibility. If he doesn't take that position, then I can understand that he wouldn't want to vote in favour of this amendment. If he does take that position, then I would suggest that to be consistent with that principle, he should be voting in favour of this particular amendment.

**The Chair:** Any further questions?

**Mr. Hudak:** Listen. As my colleague said, there are two principles here. The government says on one hand that they want OMERS to be autonomous, that this is an autonomy bill, as opposed to, as Mayor McCallion called it, a downloading exercise or a directed exercise. The parliamentary assistant earlier described the government's intent—and I appreciate his description of the intent—as to how appointments are going to be made. If I understood correctly, various groups that will have initial seats on the sponsors corp will be asked to recommend the best individuals and the government will put a lot of faith in those appointments and bring them forward. So one could describe that process as a more autonomous process.

At the same time, to an extent, this amendment takes us away from autonomy by directing which individuals may or may not sit on the sponsors corp or any committee established for advising the sponsors corp. By way of example, if CUPE had chosen, just to shake things up, Mr. Hardeman as their representative after my initial one-year term—you see, if I had the one-year term, they could call me to the agencies committee and members may have said, "Hudak's not good for that spot," and they would vote me down.

So Hardeman is the CUPE rep and CUPE determines that he is the best individual to represent their interests in the plan as a whole on the sponsors corp or, say, an advisory committee sponsors corp. The government at the time decides that Mr. Hardeman has extensive experience in business and a municipal background and would be an ideal appointee to also sit on the administration corp. He would act with due diligence in implementing the plan and making the right investment decisions, by way of example. So the principle of

autonomy would say that if CUPE also chose Mr. Hardeman to sit on the sponsors corp or an advisory group, then they should.

Of course, the other principle that has been discussed, and I've tended to subscribe to, is that you want to maintain a separation between the administrative corp and the sponsors corp. You want to make sure that the admin corp will do what's in the best interests of the plan as a whole and carry out the undertakings relevant to the admin corp and not have interference with the sponsors corp. We've already dealt with a number of amendments that would abridge that principle.

In a general sense, then, I guess the committee would decide which of those two—pure autonomy versus maintaining the integrity and the arm's-length nature of the admin corp—is paramount. Clearly, when you put it in this context, the admin corp separation and integrity of the \$36-billion pension is paramount and, therefore, despite discussions of autonomy, there's some sensible rationale behind this.

The one aspect that I have some questions about is when it says appointed to any committee "established for the purpose of advising the sponsors corporation." I understand that intent of the government. What kind of committees would be contemplated under this amendment that they would be concerned about?

**The Chair:** Is that directed at staff? Perhaps they could have—

**Mr. Hudak:** I'll start with the parliamentary assistant.  
1750

**Mr. Duguid:** I can give you a very non-technical response to this. I'd have to check to see what the proper names of these committees are, but I know there's a committee for the emergency workers, and I believe the firefighters and police traditionally have had a committee that has worked under the current regime. I think that's the kind of committee they're looking at, or would be looking at, as those kind of advisory committees.

**Mr. Hudak:** With respect to the supplemental groups, for example, and the advisory committees for those that are not eligible—there are the two advisory committees that have already been discussed in debate, and a number of groups have brought forward advice on the structure of those advisory committees. Does the bill allow for any other committees to be struck by the sponsors corp aside from the advisory committees on supplemental and those that are not eligible for supplemental plans?

**Ms. Hope:** The bill doesn't specifically address any other committees, but as with natural person powers, the sponsors corporation would have the capacity to strike any committees it saw fit.

**Mr. Hudak:** OK. So—

**The Chair:** Mr. Hudak, are you on the same line of questioning? I do have other people who would like to ask questions.

**Mr. Hudak:** I'll finish off on this one.

**The Chair:** It's on the same subject?

**Mr. Hudak:** Yes, and I'm pretty much at the bottom of it. So the sponsors committee is allowed, basically, as a natural person power, to create any number of com-



mittees it so chooses, as long as it would fit with their mandate. Is there any committee you could contemplate that would be appropriate for somebody who is on the admin corp to also sit on; for example, if they want to have a committee for better communication between the sponsors corp and the admin corp?

**Ms. Hope:** Given the separation of the roles, it's hard for me to contemplate such a context; however, this prohibition against cross-appointments would never prevent individuals from coming to meetings, appearing at meetings, being invited to meetings, providing information. It speaks to the appointment of members and I think gets at the issue of separation of duties.

**Mr. Hudak:** My colleague Ms. Horwath has talked quite a bit about her concern about the separation between the two in a communications and timeliness aspect: One will be meeting much more often than the other. If there is some kind of breakdown in communication between the admin corp and the sponsors corp, could they contemplate a committee that would have both reps of the admin corp and the sponsors corp to try to solve those issues?

**Ms. Hope:** I think what I hear you describing is something that's not so much a committee of one corporation or of the other corporation but of some decision of individuals who sit on two different entities to come together and have a discussion. I don't believe there's anything in this bill that would prohibit people from speaking with one another.

**Mr. Hudak:** So this is relevant, really, to committees created by the sponsors corp, and if they were to try to develop that kind of bipartite committee for communications, for example, they would do so outside of a bylaw from the sponsors corp.

**Ms. Hope:** Yes.

**Mr. Hudak:** So as we debate this today and send it back to the House for second reading, it's hard to contemplate any committee that it would be sensible for somebody from the admin corp to participate in, to be a member of, to sit on?

**Ms. Hope:** As I said, I can't imagine such an example.

**The Chair:** Ms. Horwath.

**Ms. Horwath:** When I read this amendment, what came to my mind—and I just wanted to clarify again. Although I have raised possible amendments to alter the accountability and transparency pieces of the relationship, I didn't necessarily have a problem with this particular motion, because what I thought it did was make sure that the admin corporation, in the role that it undertakes, didn't cross-pollinate the decision-making process of the sponsors corporation. So I didn't see it as either/or in terms of the amendments that I was putting in regard to the relationship of accountability and some of these amendments that the New Democrats have been putting through the process of this bill, but rather as a way of ensuring that as the sponsors corporation undertakes its work around possible changes to the plan—the main plan or supplemental plans or various other issues in its purview—that that be done from the perspective of the sponsors corporation and not be

unduly influenced through the possibility of having the voice or the views of those active in the administration corporation feeding in through the advisory committee process.

I didn't see this as something that I couldn't support, but having heard what the parliamentary assistant's perspective is on what this amendment does, I'm starting to wonder now whether I had it right or I didn't. So perhaps once again I can get the parliamentary assistant to outline what it was, specifically, that the government was trying to do in putting this amendment forward.

**Mr. Duguid:** I think the role of those on the administration committee is to focus on the investment and make sure they get a good return for the pension fund. I think it's important that they not be conflicted in any way with other potential concerns that may come in as representatives of individual concerns within the fund, whether it be on a subcommittee or whether it be on the sponsors committee itself. I think that's pretty consistent with most approaches that would be recommended in the pension industry.

**Ms. Horwath:** If I can just continue to clarify, this section is under the heading of the sponsors corporation, so it's not really talking about what we see or don't see as to what effect this would have on the administration corporation, but rather the effect it would have on the sponsors corporation, because all these sections come under the descriptions around the sponsors corporation's roles and jobs and, more specifically in this case, who can and cannot sit on the advisory committees or on the sponsors corporation itself.

I'm actually prepared to support it, because I think it's not such a bad idea to just include that other section; right? Because the addition really is "any committee established for the purpose," so you are adding the committee, not just the sponsors corporation.

**Mr. Duguid:** It adds the committee in as part of the consideration.

**Ms. Horwath:** It adds committee as another office the administration corporation member cannot be eligible to hold. So they cannot hold office in the administration corporation and a sponsors corporation or any committee that actually gives advice to the sponsors corporation. I think that's fairly clear.

Again, I don't think it's exclusive of some of the other things that New Democrats have put on this table in regard to transparency and accountability. In fact, I think what it does is reduce any undue influence on policy matters that the sponsors corporation might be undertaking. In municipal days, we used to call it rowing and steering debates, but let's not go down that road because we had a difficult time with it in the city of Hamilton.

So I think I will actually support this motion because, in principle, I think it's something that's supportable.

**Mr. Hudak:** Again, a couple on standard best practices: In the opinion of staff, is this approach common to most public pension plans?

**Ms. Hope:** Without detailed knowledge of the text of a variety of pension plans, it would be my sense that this kind of provision would be relatively standard.



**Mr. Hudak:** Your sense would be that it would be a best practice?

**Ms. Hope:** Yes.

**Mr. Hudak:** Chair, if could just ask legislative counsel—

**The Chair:** Is it a quick question, Mr. Hudak? If we're not able to provide a quick answer to you, I'm going to—

**Mr. Hudak:** Absolutely.

**The Chair:** Is there a quick question?

**Mr. Hudak:** Absolutely. If legislative counsel could report back to committee at our next meeting on whether the LGIC appointments to the sponsors corp initially could be reviewed by the agencies committee or not, just as a point of clarification?

**Ms. Macnaughton:** It would be our opinion, no.

**Mr. Hudak:** That was fast.

**The Chair:** That was a quick decision.

**Ms. Macnaughton:** Based on the standing orders as currently drafted.

**The Chair:** Are there any further comments or questions on this amendment?

Seeing none, all those in favour of the amendment? All those opposed? That's carried.

Committee, I think we're going to have to stop at this point, it being 6 of the clock. We're at amendment 28. We'll begin amendment 29 the next time we meet.

This committee now stands adjourned until 3:30 p.m. on Monday, December 5, 2005.

*The committee adjourned at 1800.*







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Mr. Tim Hudak (Erie–Lincoln PC)

#### **Also taking part / Autres participants et participantes**

Ms. Janet Hope, director, municipal finance branch,

Mr. Tom Melville, legal counsel,

Ministry of Municipal Affairs and Housing

#### **Clerk / Greffière**

Ms. Tonia Grannum

#### **Staff /Personnel**

Ms. Catherine Macnaughton, legislative counsel





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## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 5 December 2005

# Journal des débats (Hansard)

Lundi 5 décembre 2005

**Standing committee on  
general government**

**Comité permanent des  
affaires gouvernementales**

Ontario Municipal Employees  
Retirement System Act, 2005

Loi de 2005  
sur le régime de retraite  
des employés municipaux  
de l'Ontario

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 5 December 2005

Lundi 5 décembre 2005

*The committee met at 1553 in committee room 1.*ONTARIO MUNICIPAL EMPLOYEES  
RETIREMENT SYSTEM ACT, 2005LOI DE 2005  
SUR LE RÉGIME DE RETRAITE  
DES EMPLOYÉS MUNICIPAUX  
DE L'ONTARIO

Consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act /  
Projet de loi 206, Loi révisant la Loi sur le régime de  
retraite des employés municipaux de l'Ontario.

**The Vice-Chair (Mr. Vic Dhillon):** Good afternoon, everybody. The standing committee on general government is called to order. Today we meet to resume clause-by-clause consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act.

I believe we were on section 23 of the bill and the NDP amendment on page 29.

**Ms. Andrea Horwath (Hamilton East):** I move that subsection 23(4) of the bill be struck out and the following substituted:

"Term of office

"(4) Each member of the sponsors corporation shall hold office for a term of three years and may hold office as a member for successive terms."

**The Vice-Chair:** Any debate?

**Mr. Brad Duguid (Scarborough Centre):** We won't be supporting this amendment for the reason that we think the sponsors corporation should have the ability, once the initial transition period is done, to determine their own preferred approach to terms of office and the number of subsequent terms. Our view is that we should leave that up to the sponsors corporation.

**Mr. Tim Hudak (Erie-Lincoln):** I appreciate the motion of my colleague and the parliamentary assistant's response to the motion. To the parliamentary assistant or to the staff: Does that disqualify the sponsors committee from changing the bylaw about the length of term of office? What's wrong with having this from the outset?

**Ms. Janet Hope:** I'm Janet Hope, director of municipal finance branch, Ministry of Municipal Affairs. The motion would establish the three-year term of office in the permanent part of the bill as opposed to the transi-

tional section of the bill, so if this motion were to pass, it would be a permanent feature of the term of office.

**Mr. Hudak:** Just for clarification: So there's no way via bylaw that the sponsors corp down the road could change the length of term?

**Ms Hope:** Correct.

**Ms. Horwath:** That's good information to have. I think the parliamentary assistant suggested that it could be changed by bylaw once the transition period is over, and apparently that's not the case. So let me just put for the record the reason why this motion is before us. It is there because the concern was that the groups that are going to be appointing people to the sponsors corporation over time are going to be putting some investment into those people who are going to be appointed. There will be a significant amount of training involved; there will be a need to be quite up to speed on the issues that the sponsors corporation will be dealing with over time. It will be significant that the people appointed to the sponsors corporation have an opportunity to develop a full understanding that comes with time on the job, that comes with the history of the decisions that are being made as time moves on. To have a requirement that every six years, in effect, sponsors corporation members be switched by the sponsoring organizations seems a bit inappropriate. It's a very difficult area, as anybody knows who sits on this committee and has been walking through this bill, just through the clause-by-clause, and who sat through the discussion that came with the public hearings portion of the committee. You'll know that it's not an easy area; it's a difficult area to get a full comprehension of.

New Democrats believe that it's probably appropriate, then, to allow for successive terms beyond two three-year terms so that that experience, that investment in the appointees to the sponsors corporation, can be realized over time and not cut off at the knees after six years on the sponsors corporation. I would urge members to consider this amendment, because it's one that I think is not partisan at all, but provides for some kind of recognition that it cannot be changed in bylaws, that once we've passed it this way, it's there forever, that the sponsors corporation appointees are going to have a serious job ahead of them and that we need to take that seriously and recognize that the learning process, that learning curve, if you want to call it that, and that historical knowledge, after the six years into the nine years or whatever the case

may be, is a good thing to have in the context of a complex area like pension policy.

**Mr. Duguid:** When I spoke, what I was referring to was the next motion of the government, which would be to allow the sponsors committee to determine the term of office. That would be motion 30. Motion 67 is another government motion that would propose that the term of office be three years. The idea is that that would be for the transition period. So for the transition period the term would be for three years, but the sponsors corporation would have the ability to amend that subsequently.

**Mr. Hudak:** To make sure I understand, because I think my colleague has a good point: If you're devolving OMERS, the sponsors corp should be able to decide, down the road, the length of term and if you can do it consecutively. It may well have a Jean-Marc Lalonde of AMO, who may want to serve for a longer period of time than simply two terms, right? You'd want to give that opportunity. I mean this very positively. You're looking at me. If a quality member such as Jean-Marc Lalonde has been for his constituents were on the sponsors corp, then why limit that individual to two terms if the representative group wanted that to be the case?

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I appreciate part of my colleague's motivation here on number 29. But the parliamentary assistant is basically saying that on 30 you're going to remedy that issue. So if 30 and 67 were to pass, then the initial term of office would be a maximum of three years, and the sponsors corporation would then, down the road, be allowed to decide if you could have successive terms and that sort of thing.

**Mr. Duguid:** That's correct.

**Mr. Hudak:** Thank you, Chair.

**The Vice-Chair:** Any further debate? Seeing none, all those in favour? Opposed? I declare the motion lost.

The next motion is a government motion.

**Mr. Duguid:** I move that subsection 23(4) of the bill be struck out and the following substituted:

"Term of office

"(4) The term of office of each member of the sponsors corporation is as determined by bylaw."

I pretty much talked about it in the last debate over the previous motion. This responds to requests from a number of groups—CUPE, OPSEU and CAW—to remove the limit on members' terms. Again, as Mr. Hudak said, we think this is something the sponsors committee should decide, ultimately.

**Mr. Hudak:** I don't know if staff would know or leg counsel: Were the groups that opposed this—the parliamentary assistant listed a number of groups who had suggested this change to devolve full responsibility to the sponsors corp for successive terms, length of term etc. once they make a bylaw. Did we have any groups that expressed opposition to this particular change?

**Mr. Duguid:** To my knowledge, I haven't heard any opposition to this particular—

**Mr. Hudak:** From staff?

**Ms. Hope:** I'm not aware of any group either that is opposed.

**The Vice-Chair:** Any further debate? Seeing none, all those in favour? Opposed? I declare the motion carried.

Motion number 31 by the NDP.

**Ms. Horwath:** I move that section 23 of the bill be amended by adding the following subsection:

"Co-chairs

"(4.1) The members of the sponsors corporation shall appoint two members as co-chairs in the following manner:

"1. The members of the sponsors corporation who are chosen by entities that represent employees shall appoint one co-chair.

"2. The remaining members of the sponsors corporation shall appoint the second co-chair."

**Mr. Duguid:** Again, we won't be supporting this particular amendment. There are examples of pension plans that have this kind of format, where you have co-chairs. There are also examples of plans where they have alternating chairs between management and employees, or employers and employees.

We feel that this is something that, again, should be left up to the sponsors committee to determine what format works best for them. There are reasons why we've decided to go with the process of alternating to begin with, but we would certainly leave it up to the sponsors committee to determine which method they'd prefer in the future.

**Ms. Horwath:** I guess the committee will recognize this as another one of those issues that stakeholders, I believe it was CUPE in particular, had around the structure that the government decided on in regard to the devolution of OMERS. So you'll see several of these throughout our amendments. They address the concerns raised around the choices the government made for the structure of the plan and the way it was going to be governed, and some concerns around the extent to which the sponsors corporation and the admin corporation function. This amendment that I'm putting forward is reflective of those concerns and tries to find a way to balance the interests in an egalitarian way at the sponsors corp level.

**Mr. Hudak:** Obviously, there were a number of groups, as my colleague said, that came before the committee that advocated for the co-chair type of model. At the same time, we want to make sure that the sponsors corp will make decisions that won't get bogged down, which I think is always a risk if you have co-chairs. I'm not sure how it's typically handled. The parliamentary assistant replies that he will leave that up to future bylaws, so if they chose to go to a chair or co-chair format, that at least would fit with a devolution theme.

I apologize, but maybe I could just ask staff to remind me, how will the chair initially be determined for the sponsors corp, and then how will that chair be determined after the initial appointment?

**Ms. Hope:** The transitional part of the bill, subsection 38(3), indicates that the chair of the sponsors corporation



is to be chosen by its voting members from among the voting members. So that sets up that initially they are to select for themselves a chair, but because it's in the transitional section of the bill, they could pass a bylaw to move to co-chairs if they prefer to take that approach or to make any other determination they wish around the chair.

**Mr. Hudak:** So there's no initial role for the minister, say, or the Lieutenant Governor in Council to appoint the chair. It's left to the sponsors corp to determine the chair at their first meeting?

**Ms. Hope:** Correct.

**Mr. Hudak:** From the members who are at the table only.

**Ms. Hope:** Correct.

**Mr. Hudak:** That's fair enough. That will put the decision with the initial members who are selected. I know the minister has made a commitment to consult broadly with the various groups as to who the initial members are going to be, and then among themselves, I would guess, by a simple majority vote, they would pick the initial chair, and then down the road they could determine if they follow a co-chair or a single chair model.

Maybe just once more back to staff: Typically, of the—I'm not sure if I know the term—multipartite, multi-member pension plans, if there are multiple employer and employee groups like we have with OMERS, do they usually follow a co-chair model or a single chair model?

**Ms. Hope:** To my knowledge, both models have been used with sponsors groups. I'm not aware of one being predominant.

**Mr. Hudak:** I'm just wondering if one model comes up typically, that if there's one major employer and one major employee group, like the teachers' pension plan, for example, and others that would have multiple employer and employee groups, they typically choose the single-chair item.

**Ms. Hope:** I'm sorry. I don't have the information on the top of my head to answer that in terms of the practice of other groups.

**Mr. Hudak:** I can't speak for all my colleagues, but it seems like a reasonable way to proceed at the outset, that the members themselves would choose the initial chair, and the OMERS board itself—the sponsors corp, to be clear—could then decide whether to follow a single or a dual-chair model, depending on best practices. While we did hear this from a number of groups, I'll be opposing this particular motion.

**The Vice-Chair:** Any further debate? Seeing none, all those in favour? All opposed? I declare this motion lost.

Shall section 23, as amended, carry? All in favour? All opposed? Section 23, as amended, is carried.

The next motion is a government motion.

**Mr. Duguid:** Thank you to Mr Hudak. I'll be taking my voting cues from Mr. Hudak from now on.

I move that paragraph 1 of section 24 of the bill be struck out and the following substituted:

“1. To make decisions about the design of benefits to be provided by, and contributions to be made to, the OMERS pension plans.”

What this motion does is change the term “about benefits” to “about the design of benefits.” From what I can see, it's more of a legal type of change that staff have recommended. To get more of an explanation for it, if necessary, I think I would have to go to staff on this one if members have any questions.

**The Vice-Chair:** Further debate?

**Ms. Horwath:** Can I just ask, Mr. Chair, through you to staff, what the significance is of changing the word “benefits” to “design of benefits”?

1610

**Ms. Hope:** It goes to the issue of being clear about the separation of responsibility between the sponsors corporation and the administration corporation. There was a concern that the phrase “about benefits” was very generic and could lead to some confusion about the relative roles. So, “about the design of benefits” better clarifies the role that the sponsors corporation plays with respect to benefits.

**Ms. Horwath:** Does this amendment strike out paragraph 2, the “other duties,” or just paragraph 1? There are two points on page 10 of the bill, 1 and 2, in section 24. Are we to assume that paragraph 2 remains as is, unchanged?

**Ms. Hope:** Paragraph 2 would remain.

**The Vice-Chair:** Any further debate? Seeing none, all in favour? Opposed? That's carried.

Number 33 is an NDP motion.

**Ms. Horwath:** I move that section 24 of the bill be amended by adding the following paragraph:

“1.1 To supervise and oversee the operations of the administration corporation.”

**The Vice-Chair:** Any debate?

**Mr. Duguid:** The concern I would have with this motion is that it once again gets into the situation where the sponsors committee would be overseeing the operations of the administration committee. It's really important that that administration committee focus on their primary purpose, which is getting the best investment possible from that fund. We want to see as little confusion as possible between the two roles of the sponsors group and the administration group. We want to make sure that in fact there can't be—or there should be very little, if any, interference in those decisions between the sponsors committee roles and the administration committee roles.

**Mr. Hudak:** Once again, my colleague from the third party is bringing forward an amendment that a number of groups have spoken in favour of, and a variety of groups as well. Others, including OMERS themselves, have suggested that this will violate that important principle of maintaining the separation between those who are administering the plan and those who are on the sponsors corp.

By way of example—I may have spoken about this the other day—there may be groups who are on the sponsors



corp who will disagree with the government's public-private partnerships, for example the P3s for hospitals that the government is doing. It's valid. They'll have an ideological reason to oppose those. On the other hand, the admin corp may feel that's a worthy investment, that they would get a long-term and consistent return that would allow the OMERS plan to make predictable revenue for the plan members and, above all else, maintain the long-term dependability of what is one of the largest pension plans in the province. Maintaining the integrity of that plan will be paramount.

I can understand that there will be various groups who will oppose potential investments that the admin corp may see as in the best interests of the plan, but I feel quite strongly that we need to let the admin corp do the work and make the right investments. We need to make sure that there are strong appointees who will be making these decisions on the admin corp, the initial appointees, and subsequently those are going to be vital to the success of OMERS down the road.

Certainly, when we look at the situation of OMERS today, the current unfunded liability—I may not exactly be using the correct term—but the future increase that's going to be necessary on OMERS rates to close that gap shows us the importance of making the proper long-term and predictable investments for the sake of the members of the plan, whether they're police, fire, CUPE employees etc.

We did hear significant feedback that would be in support of section 24; we also heard arguments against. I think for OMERS in the long run and for the benefit of the plan members, it's most important for the integrity of the plan to prevail over sponsor corp interference in the investment decisions of the admin corp, and therefore, I cannot support my colleague's amendment to section 24.

**Ms. Horwath:** I do want to acknowledge formally that that is exactly why this amendment is here. It's here to build in some accountability of the admin corporation to the sponsors corporation. We heard from several groups who were concerned that the investment policies of the admin corporation need to be monitored. There were some significant problems in the past with the way that OMERS has been invested. In fact, we heard some briefs that addressed some of those scandals. Particularly the Borealis issue was a significant one.

I think it's actually appropriate for members of this plan to be concerned that if their funds are going into the very types of private-public partnerships, or P3s, that are going to eradicate public sector jobs, then in the future we could see a place where there won't be any members paying into the OMERS plan in the first place, because all those jobs will be privatized out through the P3 model.

There is some concern. What my esteemed colleague from the opposition is claiming in terms of closing the gap—ironically, the P3 model could be very much increasing the gap if we reduce the number of public sector workers paying into the OMERS plan by going through with these P3 plans throughout the public sector, at both the provincial and municipal levels.

I have to say quite clearly as a New Democrat that I don't support the P3 model. We don't believe that's the right direction to go when it comes to investment in public services. In fact, the members of this plan, many of whom are public employees, also have significant concerns in that regard.

This particular amendment is one that provides a modicum of accountability to the very members who are paying into that plan and who want to see not only the current plan being funded through member contributions but the plan being funded through member contributions well into the future, as opposed to being eroded as a result of the privatization and reduction of public sector jobs.

**Mr. Hudak:** I appreciate my colleague's comment and the passion with which she brings it forward, but at the same time, I think we have to be careful about politicizing the administration corporation that will make these important investments. I think the reality is that pension plans, not only in Canada but worldwide, are increasingly investing in these types of public-private partnerships because of the dependable long-term revenue stream they deliver for pension plans that look at those long-term investments.

I remember in my early days as a member, when I was a young pup like Mr. Duguid over there—it's a compliment; there, he can smile—a young fellow, I had a chance to work with Ed Doyle, who was a member for the Stoney Creek area, on the Canada pension plan and Ontario's position with respect to allowing the CPP to invest in the markets or in these types of public-private partnerships. An important viewpoint that we brought forward was to give the CPP that ability to invest and maximize its long-term revenue stream. We're always tempted to say that they shouldn't invest in certain types of companies, in certain types of countries, for example, because of political views that various Canadians who are part of the CPP may have from time to time. At the end of the day, the view of Ontario—and I think it has been taken up by the federal government in their decisions seven or eight years ago—was to allow the CPP to invest and maximize the revenue for its plan benefits. I think a similar principle should hold here with the OMERS plan.

So with all due respect to the member—and I think she brings forward a very valid point and does so passionately—I disagree on injecting politics into the administration corporation.

**The Vice-Chair:** Further debate? Seeing none, all those in favour? Opposed? I declare the motion lost.

Shall section 24 of the bill, as amended, carry? Carried.

Page 34, a government motion.

1620

**Mr. Duguid:** I move that clause 25(2)(a) of the bill be struck out and the following substituted:

“(a) make decisions about the design of the OMERS pension plans and make amendments to the OMERS pension plans;”



Again, this is a fairly technical change that would change the term “the OMERS pension plans including their design” to “the design of the OMERS pension plans,” including making amendment to them. I think it’s along the same roles, in terms of differentiating the roles and the responsibilities of the administration committee and the sponsors corporations. But again, if there are any questions with regard to the exact wording of this, they would have to be referred to staff.

**The Vice-Chair:** Any debate? Seeing none, all those in favour? Opposed? Carried.

Page 35, NDP motion, Ms. Horwath.

**Ms. Horwath:** I move that clause 25(2)(d) of the bill be struck out and the following substituted:

“Same

“(d) require the administration corporation to provide the sponsors corporation with such reports, opinions, contracts, information or documents in its possession or control, whether prepared by the administration corporation or any entity it controls or by a third party, as the sponsors corporation requires in relation to the objects or activities of the administration corporation;

“(e) subject to any limitations in this act or the Pension Benefits Act, amend the OMERS pension plans at their own initiative or on the recommendation of the administration corporation;

“(f) consult with the administration corporation on the actuarial methods and assumptions to be used for the purposes of administering the pension plans and pension funds;

“(g) require that the administration corporation provide it with any reports and information concerning the performance of any agents or advisers retained by the administration corporation;

“(h) establish procedures for the retention of agents and advisers for both the administration corporation and the sponsors corporation;

“(i) require that the administration corporation provide it with any information about any corporations incorporated by the administration corporation or any investments held in any manner by the administration corporation;

“(j) require that the administration corporation provide it with copies of any bylaws or resolutions passed by the administration corporation under subsection 35(3);

“(k) request that the administration corporation or any entity through which the administration corporation acts or invests to explain, consider or reconsider any policy, arrangement, plan or commitment contract;

“(l) retain advisers to assist it in carrying out its objects under the act;

“(m) seek the advice, opinion and direction of an appropriate court on any manner connected to the OMERS pension plans;

“(n) commence or defend such legal proceedings as it deems necessary; and

“(o) undertake other acts considered necessary or proper in relation to the OMERS pension plans.”

**The Vice-Chair:** Any debate?

**Mr. Duguid:** In essence, what this motion does is undertake a number of oversight roles for the sponsors corporation regarding the administration corporation. Our concern, I guess, is that this runs counter to the notion that pension plans should separate their fiduciary functions from their sponsor roles. Those roles should remain distinct and separate. I think this probably goes even further than the previous motions, and we are concerned that it would probably interfere with investment decisions. As Mr. Hudak has said previously, you don’t want to get into a situation where investment decisions are being based on the philosophical views of one or more of the sponsor committee members or groups.

**The Vice-Chair:** Further debate?

**Mr. Ernie Hardeman (Oxford):** I thank the member for bringing forward this motion. As I was going through it—and obviously, the first time over it’s rather difficult to catch all the intricacies of (d) to (o). I guess in general for us it really kind of overlaps. I think this is one of the things we were asked in the public presentations to try and avoid, or to be very clear about which corporation carried which responsibilities. This seems almost to eliminate the need for two corporations altogether; in fact, everything that one corporation does must apply to the other corporation so they can both have decision-making authority. I think the member from the government side mentioned the types of investments and so forth, that everyone would have a part in the process as to how the decision would be made.

In the whole thing I would wonder, though we talk about providing information and discussing, is there any part of this motion that in fact delivers a mandate that you must do something as opposed to sharing of information?

That would be a question to the mover of the motion.

**Ms. Horwath:** I was going to take the opportunity to outline what this amendment actually covers off. But in response initially to the question, in fact it does specifically contemplate that the administration corporation can be requested by the sponsors corporation to explain or consider or reconsider any decision that the sponsors corporation might ask it to. So, yes, in short, this motion does provide the sponsors corporation with that power to ask for consideration or reconsideration of decisions, not just explanations and information.

**Mr. Hardeman:** Again, as I go through it I keep reading where they’re providing information and they shall consider and reconsider, but there is no clear delineation, at the end of the day, of who gets to make the final decision other than the part of the bill that actually deals with the two corporations. Your amendment does not provide any tools to change or to become an assistant in making a decision. It just says that the information and so forth shall be provided and shall be considered. Is there a clause that actually says “and the other body’s decision shall be final and binding”?

**Ms. Horwath:** I couldn’t, off the top of my head, direct you to the exact part of the motion that addresses that specifically, but it’s my understanding that the set of



motions we're putting forward in regard to the powers of both the admin and sponsors corporations go directly to the issue of ensuring that there is oversight of the admin corporation by the sponsors corporation. That's the point of this motion, of a couple of motions that I've put previously and in fact some to come as yet. So in combination, the effect is that the sponsors corporation will have more oversight capacity than is contemplated by the government's bill.

Exactly which part of this multi-claused, multifaceted motion deals with who gets the final say, I think you called it, I'm not sure is in here specifically, but what it does do is ask for reconsiderations of decisions. The sponsors corporation can ask the admin corporation to consider things that perhaps it didn't have on its agenda. It can ask for explanations of various pieces of information that might be coming forward or might be produced by the admin corporation, including any kinds of bylaws or reports or documents or contracts that they enter into.

Although I certainly understand the position that my opposition colleague brought forward in regard to being asked to avoid these particular types of situations, that was a certain group of presenters, a certain group of stakeholders, that saw it fit to ask that we make sure that these roles are kept separate and never the twain shall meet. However, there are other stakeholders who thought that was not the appropriate way to deal with the devolution of the plan, so that's what this group of motions that I put forward in regard to the relationship issue between the sponsors corporation and the administration corporation are meant to affect.

1630

**Mr. Hardeman:** Thank you very much for the explanation. I guess I would agree with you to the extent that this does provide a number of obligations to make sure that information flows between the two bodies. I'm not suggesting that I'm opposed to the circulation of information, so that everyone involved with the whole pension plan understands what other sides are doing. I also recognize the issue that it was only one group that said that what was really important in this whole bill was to make sure that we keep the administration and the oversight separate.

Having said all that, I think that the other side that didn't support keeping it separate was suggesting that it should be overlapped to the extent that both had to have power in making decisions, because in their opinion, they didn't see the sponsoring corporation as actually being able to keep it separate from the other. My concern is that this amendment is the worst of both worlds. In fact, it creates the potential of confusion over who's responsible for what, and yet it doesn't, in legal terms, change anything about who is responsible for what. It doesn't bring them back together.

I guess the simple way to explain it to me and my constituents is that it provides advance warning if something was going wrong at the administrative corporation that the sponsoring corporation should know about, but it

gives absolutely no ability to what in this amendment would be considered the oversight, the sponsoring corporation, to do anything about what they see as an inevitable problem area. With that in mind, I don't believe I can support the amendment, because it just seems to create more confusion. I can assure you that I'm no pension expert, but I was confused when I read it, and I'm sure that that would flow through to the operation of the plan. It clouds who is responsible for what, because all this information has to go back.

I just use the following as an example: Any report referred to in this, after it was shared with the sponsoring corporation, what would the administrative corporation do with that? Would they wait for a response? Would they wait for an approval or a non-approval? Or would they just say, "We've sent it off; now we can go on with doing it"? I just don't think that what is the intent here is delivered at the end of the motion. So with that, I don't believe I could support this.

**The Vice-Chair:** Further debate? Seeing none, all those in favour? Opposed? I declare that lost.

Page 36, NDP motion.

**Ms. Horwath:** I move that section 25 of the bill be amended by adding the following subsections:

"Confidential designation

"(2.1) The administration corporation may designate any information, document or other thing as confidential if,

"(a) the information, document or other thing contains material, non-public information concerning publicly traded securities;

"(b) in relation to a potential transaction, the public disclosure of the information, document or other thing would reasonably be expected to prejudice the terms or conditions under which the administration corporation could enter into the transaction; or

"(c) in relation to the investment strategy of the administration corporation, the information, document or other thing could reasonably be expected to prejudice the terms and conditions under which the administration corporation could implement the strategy.

"No disclosure of confidential material

"(2.2.) Any information, document or other thing that is designated as confidential under subsection (2.1) may not be disclosed by the sponsors corporation without leave of a court, except the sponsors corporation may disclose the information, document or other thing to the following:

"1. Persons who are members or employees of the sponsors corporation.

"2. Persons employed by third parties who are retained by the sponsors corporation and who execute a confidentiality agreement in regard to the disclosures that is satisfactory to the sponsors corporation.

"Same

"(2.3) Persons who receive any confidential information, document or other thing from the sponsors corporation in accordance with subsection (2.2) are



prohibited from disclosing the information, document or other thing without leave of a court.”

**The Vice-Chair:** Any debate?

**Mr. Duguid:** What this motion would do is prescribe a disclosure policy for the administration corporation, and it's my understanding that it's the government's intention to make the administration corporation and the sponsors corporation subject to municipal freedom of information and protection of privacy legislation. This legislation, along with the rules contained in the Corporations Act, are really what dictate what information the administration corporation could deem to be sensitive. Again, I don't think the government side wants to get into the to-and-fro of problems that may occur between the administration corporation and the sponsors corporation. I think we want them to be separate and distinct, and we'd continue along that vein.

**Mr. Hudak:** Just on a point of clarification, I guess: I know my colleague here wants to ensure that there's a description of what would be confidential and what would not. I would anticipate that the revelation to plan members is important within certain bounds. Did I understand the parliamentary assistant to say that the government has the intention of making the sponsors corp and the admin corp subject to FOI legislation?

**Mr. Duguid:** That's correct. I've been advised that we have that intention. Exactly how it's done or whether it needs to be done in a particular fashion, I'm not quite sure, but I've been advised that we will be making the administration corporation and the sponsors corporation subject to municipal freedom of information and protection of privacy legislation. We could go to staff to perhaps get further information on that.

**Mr. Tom Melville:** It's Tom Melville, from the legal services branch of the Ministry of Municipal Affairs and Housing.

That would be done through a regulation or a change to the schedule under the existing Municipal Freedom of Information and Protection of Privacy Act.

**Mr. Hudak:** Just let me understand: You won't need another bill to do so; you can simply do that by regulation?

**Mr. Melville:** That's correct.

**Mr. Hudak:** And it's the MFIPPA legislation that would be relevant?

**Mr. Melville:** That's correct.

**The Vice-Chair:** Any further debate?

**Ms. Horwath:** I'm not going to belabour the point, but what the motion does is simply provide clarity around what is and what isn't considered to be confidential. It gives, of course, the administration corporation a better perspective as to what process should generally be undertaken in regard to information to determine whether or not it should be considered confidential in nature. Even though those other motions haven't passed, it still is one of the motions that addresses the relationship between the sponsors corp and the admin corp in regard to information sharing and oversight of the admin by the sponsors corp.

**Mr. Hudak:** Just a quick question, and my colleague Mr. O'Toole has a question too. In terms of best practices surrounding public pension plans and determining what remains confidential and what would be open to members who want to ensure that their funds are being wisely invested, what tends to be the best practice used by public pension plans in this regard?

**Mr. Melville:** I'm not sure I feel competent to answer the question as asked. I can say that there are rules around disclosure of information in the Pension Benefits Act that make certain pension information available to members and others.

**Mr. Hudak:** The reason I ask is that members will want to ensure that their funds are managed wisely, not only the investment decisions but the administration of OMERS as well, for example, to make sure that any expenses members partake in could be obtained by plan members. We recognize there would be transitional costs which could be substantial. The government has indicated that they are considering whether to help cover those transitional costs, and I'm pleased to hear that that's under consideration. Plan members may want to know that administrative and transitional costs are minimized. So separate from investment decisions, would those types of costs be available to plan members under MFIPPA or other means?

1640

**Mr. Melville:** I think it's fair to say that information of a factual nature is often available under MFIPPA principles. It's hard to be specific without a specific example, but that is a general principle of the legislation.

**Mr. John O'Toole (Durham):** Just following up on Mr. Hardeman's point—the same point that I'm still worried about—who has primacy at the end of the day? If I see, looking back at other sections of the bill, the role of the actuaries and the role of the sponsors corporation and administration corporation, they can set fees, remuneration for members of each of those boards, I assume that would be disclosed in their annual report, like most public companies disclose the remuneration. Is that too simplistic to assume?

**Mr. Melville:** I'm not sure I can speak specifically to what may be disclosed in terms of public reporting under the corporate rules, but the ordinary rules would apply. In addition, as I said, any information that was of a factual nature would be available under the MFIPPA legislation. I can say that, ordinarily, the ranges of salaries are available under freedom-of-information legislation.

**Mr. O'Toole:** Today, without any administration or regulation change, that should be a pretty routine request made by a member or a member of the public, when in fact at the end of the day it's the public who really, in one form or another, through tax or whatever, is part of this plan, as the employers basically engage for the purpose of public business on behalf of the taxpayer, really. They're represented by whom here?

**Mr. Melville:** I'm not sure I—

**Mr. O'Toole:** Well, if the employer in that group is basically an elected person—a mayor or a reeve or a regional chair—and they're really privy to approving and



voting on agreements on enhancements or changes to the plans, would they first be able to be members of the boards? I would assume they would be. They would be on the sponsors side, wouldn't they?

**Mr. Melville:** That's a representation question maybe.

**Ms. Hope:** The bill does provide for a variety of employer groups, such as the Association of Municipalities of Ontario, to make nominations both to the sponsors corporation and to the administration corporation. So there are direct avenues for the major employer groups to have a role in each of the corporations.

**Mr. O'Toole:** Well, it is important. I think that the mechanism for resolving disputes between the administrative group as well as the sponsor group would be through the courts. If there's a disagreement on who has primacy—because I don't think that's clear to me, and I think Mr. Hardeman was asking about the same point—the administrative group, to me, would seem to be at arm's length, with the best interest of return on investment, and as such should have primacy.

**Ms. Hope:** I think the intent of the bill, as drafted and as proposed to be amended by some of the government motions, is to make that distinction quite clear.

**Mr. O'Toole:** That they basically have primacy.

**Ms. Hope:** On fiduciary matters, the administration corporation would have primacy.

**Mr. O'Toole:** Right, and any resolution to that would be through the courts?

**Ms. Hope:** Presumably, yes.

**Mr. O'Toole:** There's no role for the government of Ontario, in this case, at all?

**Ms. Hope:** That's correct. There's no role for the province.

**Mr. O'Toole:** Quite interesting. So the current administrator of the plan today, the OMERS pension group—is there a transition? Are the members who are there today going to be transitioned in? What's happening there? Is that clear?

**Ms. Hope:** Later provisions in the bill, in the transitional section, set out—

**Mr. O'Toole:** OK. It sets that out. I apologize for not being fully briefed.

**The Vice-Chair:** Any further debate? Seeing none, all those in favour? Those opposed? I declare that motion lost.

The next motion is an NDP motion. Page 37.

**Ms. Horwath:** I move that subsection 25(3) of the bill be struck out and the following substituted:

“Bylaws

“(3) Subject to subsection 25(4), the sponsors corporation may pass bylaws and resolutions regulating its proceedings and for the conduct and management of its affairs.”

**The Vice-Chair:** Any debate?

**Mr. Duguid:** This was indeed a concern that was raised by some members, but it was a concern that frankly many of us felt was misguided. We expect the sponsor committee is going to meet frequently, and I think because there was a minimum amount put in the

legislation, people thought it meant that the sponsors committee would meet hardly at all or once a year or something like that. I can't remember exactly.

We expect the sponsors committee to meet very frequently, particularly in the initial years. There's no restriction on that. All the bill has in it are minimums. To suggest that it has to meet five times per year—it probably will the first year, it may the second year, but there may be times when it doesn't have to meet five times. So why would we be telling them they have to meet? They can meet whenever they need to meet, and we'll leave that decision up to the wise judgment of those who are appointed to that particular corporation.

**Ms. Horwath:** Mr. Chair, this is just another amendment that speaks to the relationship. If the relationship was changed to reflect all of the amendments that the New Democratic Party is putting forward in regard to the relationship between the admin corporation and the sponsors corporation, then the requirement to meet more often than the minimum of once every three years is important. That's why this amendment is before us. So I don't disagree with what the parliamentary assistant said, except that rather than keep it silent, we thought it was important to add an amendment that reflects the desire to ensure that the sponsors corporation is meeting more often.

**The Vice-Chair:** Mr. Hudak?

**Mr. Hudak:** My colleague Mr. Hardeman has a question too.

The parliamentary assistant is right. I suspect that the sponsors corporation will meet regularly, if not frequently. If we understand the process so far, the minister will consult with the various constituent groups who will recommend individuals. Those individuals obviously will be well recognized by their group; otherwise, they wouldn't appoint them to something of significance like the sponsors corporation.

Secondly, it will initially go through the Lieutenant Governor in Council for those first appointments, as we know. I do want to say again that I would like to see a process where members of the agencies committee could call for consideration for interviews those who are the initial nominees to the sponsors corporation. That acts as another check and balance, if you will. I know that this bill doesn't allow for that. Nonetheless, there could be a friendly agreement between House leaders, so to speak, to allow that to happen.

I don't know if members of the committee would do that. They may have full faith in the groups that bring names forward and see no need to do an interview in this process, but I do think as a very fair check and balance that that shall occur.

Maybe I could ask, again, one of my usual questions to staff. Is it typical in public pension plans that the legislation would outline the number of times, as a minimum, that a sponsors corp or an admin corp would have to meet, or is it best practice for them to allow their own schedule to be developed?

**Ms. Hope:** I'm actually not aware of the specifics that might be set out in legislation or other founding docu-



ments for other pension plans, so I can't really answer the question.

**Mr. Hudak:** Do we know typically if the various comparators—has it been an issue that they meet too infrequently?

**Ms. Hope:** I'm not aware of issues around sponsors groups meeting too infrequently or too frequently.

**Mr. Hudak:** Again, I'm obviously no expert on pension plans, but have been a member and represent a significant number of constituents; as we all do, who would be part of various pension plans. I don't recall this being an issue in the assembly or in my constituency office, that the HOOPP does not meet often enough or teachers do not meet often enough and such. While I think it's important for the sponsors corp to meet regularly, I think it's reasonable to give them the benefit of the doubt to devise their own meeting schedule, which I suspect will meet with the satisfaction of this committee if we revisit the issue over time. If the minister does follow through with his commitment, as expressed by the parliamentary assistant, on how the sponsors corp members will be appointed at the outset, then I would expect and have some degree of faith that the meetings will be frequent enough. If not, I guess we could always revisit the issue, but I'm willing to give them the benefit of the doubt in that respect.

1650

**The Vice-Chair:** Mr. Hardeman.

**Mr. Hardeman:** Mr. Chair, my question is through to the clerk's department, on a point of order. I'm having trouble as I look at this amendment. It would suggest that the only change is referring to a section that doesn't exist. As a point of order, it would seem to me that the number should have been changed, and the issue of whether we are going to deal with the time of meetings be in the bill. If it's not in the bill, then this amendment would look out of place, because we can't go back to deal with it again, and if we approve the first resolution and then vote against the second resolution, we're going to have a big problem. So it seems to me that the issue of the number of meetings per year should be an amendment prior to, not subsequent to, the one that refers to that amendment having been passed. I don't believe that we can make this one work if the government side deems this to be a very appropriate resolution, because it's identical to what's already in the bill except that it refers to a section that doesn't exist.

So I would suggest that if the government votes against this, they're opposed to their section, because it's exactly the same, and then we don't approve the next one, and we're stuck with something that doesn't work. So I think, in order of procedure, the amendment should have been numbered differently. I would ask the clerk for a ruling on that.

**The Vice-Chair:** We're going to postpone this, and we'll go to the next one.

**Mr. Duguid:** The government side has no objection to that, from our perspective. As long as it makes sense to the clerk procedurally, it's fine with us, for sure.

**The Vice-Chair:** Page 38: NDP motion.

**Ms. Horwath:** I move that section 25 of the bill be amended by adding the following subsection:

"Meetings

"(4) Despite any bylaw, the sponsors corporation shall meet at least five times a year for the purpose of considering any issues related to the OMERS pension plans."

Again, just as was indicated by Mr. Hardeman, this is the subsection that's referred to in the previous motion that I put—subsection 25(4)—which is a new subsection that addresses the number of times the sponsors corporation meets.

**Mr. Duguid:** As I said previously, we will not be supporting this. We don't think that we should be prescribing the number of meetings that the sponsors committee should be having; it should be left up to them.

**Mr. Hudak:** I will just repeat the arguments I made previously with respect to specifying the number of meetings in the legislation itself. I have confidence that if the process that has been outlined does take place for appointments, the sponsors corp will meet frequently enough. It could always be revisited if this is not the case. As I said, if the agencies committee does have the ability to interview intended appointees to the sponsors corp, it would certainly be a question that the members of the committee could ask, and I would think we'd get a very reassuring answer to it.

**Mr. Hardeman:** I appreciate the opportunity to debate the motion. First, as to the number of times they meet, I agree with the principle of this motion. I think it's ludicrous to believe that we could set up a corporation, as the government is proposing, to meet a minimum of once every three years. I just think that doesn't make sense. I don't know why one would set up a corporation to meet that often—or the lack of meetings, shall we say. I say that with all due respect to the authors of the bill.

Having said that, I believe that making it a minimum of five times each year, with what we envision the sponsors corporation to actually be responsible for—I think meeting more than once every three months as opposed to once every three years is quite a step the other way. Maybe it's asking more of the corporation than one could reasonably expect it to do.

I think this motion makes some sense if we look at all the other motions the member has put forward as to changing what the sponsors corporation is going to be responsible for or what they need to do in relation to the administration corporation and vice versa—what the administration must do with all the things they do. If they have to send as much information and have as much dialogue with the sponsors corporation, I would guess they'd likely have to meet more often, maybe even as often as five times a year, in order to deal with all that information.

Having said that, so far the amendments that have been put forward by the member have not been well received on the opposite side of the room today. So again, it looks like we're not going to be needing quite as many meetings as the member is proposing. With that in



mind, I could support this amendment with a much lower margin, and if the government comes to the part where we deal with the actual number of meetings, we would indicate that once every three years is not sufficient time to get together with any board and keep continuity and keep the board running.

It relates also to the comment that my colleague made about how they will be appointed and whether they will be interviewed. During that discussion with the ministry counsel, it was also suggested that they would be one-year appointments; that dealt with whether they could be called by the ABC committee for interviews. If they're going to be one-year appointments and they're going to meet once every three years, we would have everybody appointed for the third time before they had their first meeting. That, to me, doesn't make a lot of sense.

I think we need to look at the timing of appointments and the timing of the meetings. That's why I'm somewhat supportive of this resolution to set some kind of minimum standard that is well below once every three years, but I can't support at least five times a year. I think it may be asking too much of the sponsors corporation. With that, I will not be supporting this resolution, because of the massive number that's in it.

**Mr. O'Toole:** It's worthwhile pursuing, I guess, just for the record. What is the experience of the current OMERS board in terms of frequency of meetings? Is there any experience on that?

**Ms Hope:** I don't know a specific number, but it's my understanding that the board does meet quite frequently.

**Mr. O'Toole:** Would that be the administrative or the sponsoring-type functions?

**Ms Hope:** The administrative functions.

**Mr. O'Toole:** I would expect, as the point has been made here, that to be prescriptive in setting up a new plan or reviewing such things as supplementary benefits might become complex. I think that's what this is about. It's trying to empower both groups to do whatever is necessary. As you say, the way it's drafted, it sort of sounds like three years and this amendment is prescribing something more prescriptive. But that defies the whole point here of the autonomy of this organization and the government trying to tell them—I'm sure before it's actually constituted, they'll resolve these relationship issues between the administration and sponsors groups. If I look through—I finally finished reading the thing—it would look to me that that would be a lot of meetings probably in the first transitional year, whether it's the appointments and cross-appointments and affiliations, before they ever get to some of these new envisioned plans that they might have going forward.

I just think the bill sets a very low threshold; it must be based on some experience that it runs fairly smoothly on the administration side, but on the sponsorship side, with good information, annual reports to the membership—the board reviewing those as being appropriate; that's why they're appointed there—I think they make their own rules technically without prescribing things

here that—meeting for the sake of an overnight stay in California or somewhere. Anyway, thanks.

**1700**

**The Vice-Chair:** Any further debate? Seeing none, all in favour? Opposed? I declare that lost.

Next is a PC motion. Page 37, I'm told, is no longer required.

**Mr. Hardeman:** I move that subsection 26(1) of the bill—

**Mr. Duguid:** On a point of order, Mr. Chair: Did we go back to that other motion?

**Mr. Hardeman:** It's out of order, no?

**Mr. Duguid:** Oh, it's out of order. OK. Sorry.

**The Vice-Chair:** Shall section 25 of the bill, as amended, carry? That's carried.

We're on page 38a now, with the PC motion.

**Mr. Hardeman:** I move that subsection 26(1) of the bill be struck out and the following substituted:

"Procedural and other requirements for decisions

"26(1) A decision of the sponsors corporation requires an affirmative vote of two thirds of its members, excluding non-voting members."

The reason this motion is being put forward is to recognize that the sponsoring body is more than a procedural process. They don't administer the plan; they just set the policies that would change the plan dramatically. As we will know through all the presentations we've had and through all the discussion we've had so far, the changing of policies within the plan is a major departure from where they are. It could have dramatic impacts on the plan that would not necessarily be visible that day.

Obviously, if we look at the OMERS plan today, the financial status of that plan is considerably different today from what it was five or six years ago, when they decided that we could have a premium holiday across the board because there were excess funds. That's not true today. Today, the premiums have to be reinstituted not only the way they were, but at a much greater level than was previously there. I don't think that's something wrong; that's just the way the world turns. But with decisions that would change the benefits or the plan in itself in its entirety, the finances that support it today may not be able to support it in the future.

The decision of whether that is good or bad should require more than the opinion of one person on the board to make the final decision, assuming that we have the board structured to 50-50: the labour and the management side. I think it's important that we shouldn't have the vote decided by one person who, for whatever reason, may have a different view that particular day than the side they come from, shall we say, would represent. I think it makes much more sense to have a larger majority make that decision as to whether we're going to change the fundamental structure of the plan, as opposed to doing something else with the excess revenues or whatever.

I don't think it's unreasonable to assume there are other places where the higher threshold of a vote is taken into account. The sponsor being a municipal government,



if you are a member of municipal council, you will realize that if an item has been dealt with, to have it reconsidered requires two thirds of the vote, not because that's necessarily a big decision, but because it has different circumstances from the decision that's already been made. At some point, you'll have to have finality to it.

There are other reasons that require a certain larger majority than just the majority of the vote. That's why I think it's important to have this here, because this part of it is so critical to the effective and efficient operation and the ability of the plan to stay solvent. I think it's so important that all decisions on the changing of the plan have thorough discussion and no quick vote to make a major change that some of us might regret down the road, that we kind of wish hadn't been made, but it didn't get as thorough a discussion as it might have had.

We're here today, and I appreciate the fact that we're here on first reading of the bill, to have a thorough discussion, but when the minister introduced this bill, he suggested that with all the work he'd done with consultations so far, and with the people he'd heard from so far, this was the ideal bill to deal with the topic at hand, which was the devolution of the OMERS plan. I don't think he envisioned at that time that upon hearing the depositions that we heard in the four days of hearings, it would require that many amendments to make the bill deal with the issues that were brought up.

I don't think it's unreasonable to say, let's make sure that in the future the plan has that same protection, that it takes a thorough thrashing out of the ideas and convincing of all the people on the board to make sure that where they're going is where they all collectively want to go for the benefit of the plan.

We did hear from a number of deponents that, at the very least, we should have a—I don't know what you call it, a strong majority—

**Ms. Horwath:** A supermajority.

**Mr. Hardeman:** A supermajority or a strong majority—a two-thirds vote of the board in order to make major changes to the plan. That's why this motion is being put forward.

**Mr. O'Toole:** I also want to support the work that Mr. Hardeman has done, both now in the Legislature and in his prior term on AMO and ROMA organizations. He makes a very good point, because the argument has been made quite well, actually: There's significant opposition to any devolution here, I'm sure that we've heard that, and any significant change in a plan, specifically a pension plan, is perhaps going to cause mistrust and misunderstanding. I think the point here is that with council and other democratically constituted forums, a motion to reconsider takes a two-thirds majority, to reverse a council decision or bylaw. Maybe I could get the clerks to check that, but those are the kind of standing orders in that forum. That's a very good argument for saying that this is a transforming event in terms of some of the constituted issues here.

Any time they change a plan, I would put to you that in many cases actuaries—it's just a very sophisticated

guess. When you look at some of the arguments being made here on looking for a greater return on investment, security of investment, threshold of risk, some of the assumptions on life expectancy and composition of the workforce—they're just sophisticated guesses.

I was privileged when I was in finance to do some work on the pension surplus distribution issue and a few other things, and became less and less certain. We didn't move on it. In fact, I would say that after listening to the Monsanto decisions, I was completely of the opinion that there's no such thing as an actuarial surplus. It's a fluctuation in the market. I think both groups at that time, perhaps even the government, wanted relief from the payroll issues that pensions ultimately are. You flush in 10% cost on top of payroll, which is really the pension contribution; it's significant. If those changes fundamentally affect these administration and sponsoring groups, the contribution limits, under certain decisions made, the employer would have a very diminished role, and I don't think there should be an imbalance of relationships or the voice on any of these boards. I don't think the administrators would be recommending—they would be administering the investment side of the business, I would think, and the sponsoring groups would be those groups representing employer-employee interests, and indeed taxpayers' interests, at the end of the day.

I think these issues will become much more robust as we move forward in the pension world. As long as the legacy issue, and there's some conflict with the actuarial assumptions—I will be supporting it, and I urge the government to give this consideration.

I do have a question at the end of this. Are there provisions for the constituted votes or prescriptive vote procedures in the sets of bylaws? This bill does permit them to create operational bylaws. In that, would it be in their interests, among their memberships, to prescribe this sort of amendment that Mr. Hardeman has moved? That's the question I have. Would they be able to set thresholds for certain types of votes—resignation of members, replacement of members, all those kind of things; like, who calls a meeting or what is the requirement for a meeting? If you time things properly and the attendance—I'll just put that to you as a question. I hope I've left it clear enough, what my question is.

1710

**Ms. Hope:** I think so. The motion that has been put forward, as I understand it, would require that all decisions of the sponsors corporation of any sort whatsoever, passing a bylaw, accepting minutes, what have you, would require—

**Mr. O'Toole:** A simple majority.

**Ms. Hope:** —a two-thirds majority of members.

**Mr. O'Toole:** Two thirds?

**Ms. Hope:** Well, it's replacing 26(1)—

**Mr. O'Toole:** Oh, I know what it's doing.

**Ms. Hope:** I beg your pardon?

**Mr. O'Toole:** I understand what 26(1) is doing.



**Ms. Hope:** The motion to amend would have all decisions require two thirds. The bill, as introduced, requires a simple majority of members for all. But I think the government does have motions that we will be coming to shortly drawing a distinction between a simple majority for a majority of matters of the sponsors corporation and a two thirds for what are referenced as “specified changes.”

**Mr. O'Toole:** It's a very valid amendment. I hope the government is prepared to look at the democratic nature of this thing in the context of somebody tampering. I don't think we had a two-thirds majority when we cancelled our pension back in 1995. I put that on the record. I think it was more of a whipped vote. It was sort of a whipped vote, as I understand it. Many of us voted in ignorance, perhaps, retrospectively. History is a great educator.

Thank you.

**Ms. Horwath:** You might recall that during the public hearing portion the whole room dissolved into giggles when we talked about how many times we saw the supermajority required at the municipal level. I think the supermajority or the two-thirds majority, although I understand why it's being put forward as a recommendation, is unreasonable. I think it will do exactly the opposite of what the member was hoping it would do. I really don't think it makes things more efficient. In fact, it will bog things down, because I don't think it's going to be a way to get decisions made. It's going to cause more trouble than it's worth.

There has to be a recognition that the sponsors corporation is made up of the interests of the plan members and the employer side. With the representation of both of these interests, any ability to take a two-thirds majority will be almost impossible. I think a simple majority is the right way to go.

Something that we need to acknowledge is that it's different parties that have different interests at this sponsors corporation table. Hopefully, there will be opportunities for those interests to converge in making some sound policy decisions, and I expect that that would be the case.

**Mr. Duguid:** Thank you, Mr. Hardeman, for bringing this motion forward.

As we've discussed this issue, it has been one of the most talked-about issues in the legislation. Over the last number of days, we've been taking an ever closer look at it. I can tell you that the government side supports in principle what Mr. Hardeman has moved forward. I'm not saying “in principle” in a partisan fashion, saying we're going to reject your motion and rewrite it and put our own forward. In essence, we will be putting our own forward, but not because we disagree necessarily with the principle behind what Mr. Hardeman has put in front us.

The concerns we have are really twofold. The first is that requiring a two-thirds majority for all decisions is a little bit much. There are a lot of minor decisions that are made by these groups that wouldn't require two thirds. Our motion, which will be before us in a minute, would

propose that specified changes only require two thirds. Specified changes are defined in the legislation—I believe it's under subsection (2)—as changes in benefits, contribution rates and/or setting up of reserves. So the important decisions, in other words, should require two thirds. The minor decisions really shouldn't need to require the two thirds.

The other concern we have with the motion as it's written is that if the two thirds are not required, and you have between 50% and two thirds, it would likely automatically be sent to arbitration. We think that the corporation should decide whether or not they want to send an issue that hasn't been decided on to arbitration. What we would suggest is once a vote is taken, if there's between 50% and two-thirds approval, the corporation or the board would then decide, on a majority vote, whether to send it to arbitration. This would provide them with the ability to continue to try to come to a consensus.

In essence, we support the principle behind Mr. Hardeman's motion. We agree with it, but we've made a couple of changes in the motions that we'll be bringing forward that we think will make it a little more effective.

**Mr. Hardeman:** I'm glad to hear from the government side that they too realize the risk or the problem with a straight majority vote in deciding major issues that will affect the pension plan for the future, although I would disagree with the comments from the parliamentary assistant that suggested that the two thirds would have more opportunity to go to arbitration or to an arbitrator. It would seem to me that in voting, if the vote doesn't pass, it doesn't mean it's undecided. A vote that doesn't pass is a lost vote, so that doesn't go to arbitration. Arbitration, in my estimation, is what's created in the present bill where if it's 50-50, it's not won or lost, because you have to have 50 plus one. So you could have an equal number of votes, then it goes to arbitration. Anything else is either a won vote or a lost vote. I don't think there's a problem with going to arbitration more often.

I think that one of the reasons that I strongly support having a supermajority vote for—and I would concede to the parliamentary assistant that our concern is much more for the ones that are listed in our next part about the specified changes. That's where our great concern is. We will remember from the presentations, particularly from the municipal sector, their concern was that as soon as we had a 50-50 vote, labour is all on one side and management is all on the other, they're in the dead heat, and it automatically goes to arbitration. The main issue for them was the supplementary plans and the ability to create those, particularly the ones that are mentioned in the bill. Since they've been changed to be mandated in the bill as opposed to being the first ones to be dealt with by the board, I would agree that the challenge now is just how we deal with those types of decisions in the future.

I'm pleased to hear that the government has decided to go with the two-thirds vote on major decisions that would dramatically impact the plan one way or the other. We would like to see them support our motion this way, but



we will be voting in favour of your motion if one comes forward.

**1720**

**Mr. Hudak:** I appreciate the kind words by the parliamentary assistant directed at my colleague Mr. Hardeman, who I know has done a lot of work on this particular amendment, which I think reflects a good deal of the presentations we heard. I understand the parliamentary assistant says we should be specific to specify changes for the supermajority, and then ordinary, everyday decisions could be by a simple majority.

There's one thing I'm not clear on. I've listened to debate, and I did miss the first day of clause-by-clause. If I could ask through you, Chair, to staff: The current status of supplemental plans for police, fire and paramedics, I think we passed amendments earlier on with respect to those issues, so could you refresh our memory as to what the current status is in the amended bill and how they would be impacted by the motion currently before us, or not at all?

**Ms. Hope:** The bill, as amended in earlier debate of committee, would direct the sponsors corporation to establish a supplemental plan for the police, fire and paramedics sector within 24 months. So the sponsors corporation would need to get on with doing the work that would be required in terms of developing that plan: seeking registration, doing all of the necessary work to support that process. Therefore, I don't see that the supplemental decision-making process that's referenced here would be relevant to the establishment of that plan, because the sponsors corporation is directed to establish that plan.

**Mr. Hudak:** Right. The bill has been amended. So supplemental plans declared for police, fire and paramedics are currently part of the legislation before us because of the amended bill.

**Ms. Hope:** Correct.

**Mr. Hudak:** That decision having been made, does Mr. Hardeman's motion affect the establishment of supplemental plans in any way?

**Ms. Hope:** To the extent that the sponsors corporation has any decisions to make with regard to the development of the plan text etc., in order to bring the supplemental plan into being, any decision of the sponsors corporation for Mr. Hardeman's motion would require a two-thirds majority vote.

**Mr. Hudak:** I'm sorry, I don't know if I follow that exactly.

**Ms. Hope:** Mr. Hardeman's motion suggests that any decision of the sponsors corporation, any decision whatsoever, anything that has to go to a vote, would require a two-thirds majority. So the sponsors corporation has been directed to put this plan into place, but they may face certain decisions along the way, because the bill speaks to the outcome which is to be achieved—the plan to be registered, to be put in place—but there will be, presumably, some decisions to be made along the way in order to bring that into being. So any decision that might

be required by the sponsors corporation would require a two-thirds majority vote for this motion.

**Mr. Hudak:** Thank you. Therefore, if Mr. Hardeman's motion fails and we're debating the government motion—

**Ms. Hope:** I beg your pardon?

**Mr. Hudak:** No problem. The motion Mr. Duguid will bring forward shortly talks about a two-thirds majority for specified changes, according to legislation, and a simple majority with respect to non-specified changes. So for the purpose of what a specified change is, that does not include supplemental plans.

**Mr. Melville:** Just to go back a little bit, I think the new requirement that was passed by this committee would require the sponsors corporation to establish supplemental plans containing the features that are described in that section. That's a statutory requirement. So, presumably, to comply with the law, they would have to do that within 24 months. In terms of the voting mechanism, as my colleague said, presumably, they would still have to comply with the two-thirds majority.

**Mr. Hudak:** With Mr. Hardeman's motion.

**Mr. Melville:** With either.

**Mr. Hudak:** With either, OK. There's probably a number of questions. I'm just trying to understand, if either of these motions passes, how decisions would be made down the road and which type of changes would require two thirds and which type of changes would not, under Mr. Duguid's motion.

So Mr. Hardeman calls for a two-thirds majority in all cases, in any decision of the sponsors corp. I can appreciate where Mr. Hardeman is coming from on this, because we did hear from a number of groups that talked about the sensitivity about some of the decisions that the sponsors corp will be making. I mean, after all, it's a \$36-billion plan. It represents roughly 400,000 employees across the province and 900 employer groups. So I think for any major decisions to the plan, it's very reasonable to say that it should be a supermajority.

It's my understanding from various presentations and the chart that AMO brought forward, for example, that they talk about supermajorities or unanimity being required in certain circumstances. HOOPP, for example, if AMO's chart is correct, is a majority vote, but changes that impact formula for contributions or funding require unanimous agreement of the settlers. A similar comparator, the CAAT plan, says changes to the plan require unanimous consent of the sponsors. The BC plan says a majority vote will be the normal circumstance, but changes affecting contributions require unanimous agreement of partners. LAPP, the Alberta municipal plan, which I think is just proposals only—it hasn't become legislation as of yet—says a three-quarters majority would be required for a supermajority.

So I think what Mr. Hardeman is getting at in terms of a supermajority for major changes is sensible, and you could have one member of the various constituent groups defect from what the rest of his or her membership is



saying and in that way could change—a substantial shifting in the plan.

Secondly, you do want to try to encourage groups to work together. You want to try to avoid the 50-50 divide constantly and the use of the arbitration model. The arbitration model is intended to be there as a last resort instead of the usual practice, so to speak. So I think a two-thirds majority gets you there as well.

If I understand the parliamentary assistant's words, I do think that we're on a similar page on major matters being determined by a supermajority, and other matters that are not defined as specified changes would have a simple majority and, I guess, get through quickly.

Is my logic accurate? Is the parliamentary assistant's motion or Mr. Hardeman's motion closer to what is established best practice in other public pension plans?

**Mr. Melville:** Again, I'm not sure I can speak to what's best practice in other pension plans, but the government's motion, I think it's fair to say, would have a two-thirds majority for the specified changes, which you can read, but they're essentially major changes. For other decisions, it would be a majority vote, and one could think of examples such as a procedural change to the bylaw, something like that.

**Mr. Hudak:** Sure. I appreciate staff's response, Chair. You can see by the nature and the number of amendments that have come forward and the various approaches by the delegations before the committee that this bill is extremely complex. There's obviously a number of things—there's consultation on this bill, I understand, but a lot of things that weren't anticipated that the amendments seek to address.

I believe now there's been a commitment among House leaders for second reading hearings on this bill, which is a good thing, so we can have another chance to take this out for further consultations to see if we did get it right. That's why I have a certain comfort level with major decisions reflecting a supermajority—Mr. Hardeman suggest two thirds—because the experience of this committee has been that unintended consequences may not be easy to anticipate; it may take some time to come to light.

That having been said, if Mr. Hardeman's motion is not successful, then we do appreciate that the parliamentary assistant's motion seems to be on a very similar line as Mr. Hardeman's in requiring major changes to the plan to in fact have that supermajority and try to build co-operation on the sponsors corp as opposed to setting up constant 50-50 votes.

**Mr. Duguid:** Believe it or not, I have a quick question to staff. I just want to get clarification. If Mr. Hardeman's motion were to carry, how would it work vis-à-vis arbitration decisions?

**Mr. Melville:** That would be a two-thirds majority, because it would be for all decisions.

**Mr. Duguid:** So all decisions—when would something be sent to arbitration and when would it not?

**Ms. Hope:** Subsection 26(3) of the bill clarifies when a decision is made with respect to a specified change. So

it's either by the sponsors corporation itself deciding to make the specified change—and if Mr. Hardeman's motion passed, that would be a two-thirds majority—and then in paragraph 2 of that subsection (3), if the sponsors corporation decided to refer the matter for consideration under the supplementary decision-making process, so presume that that decision would then also require a two-thirds majority. So it could only be sent to mediation-arbitration with a two-thirds majority under Mr. Hardeman's motion.

**Mr. Duguid:** Thank you.

**The Vice-Chair:** Mr. Hardeman.

**Mr. Hardeman:** Mr. Chair, there's one quick question that I wanted to clarify, through you to the parliamentary assistant: My understanding is that the only difference between the government motion and the amendment I've proposed is for normal procedural things, but in fact anything to do with the supplementary plan would require, in the government's motion, a two-thirds vote. It says in 26(2)(a) "a change in benefits for members of any of the OMERS pension plans," so any issue to deal with supplementary plans would then, in your motion, also require a two-thirds vote. Would the non-requirement for a two-thirds vote be in the operation of the corporation aside from pension benefits?

1730

**Mr. Duguid:** My understanding is that only specified changes would require a two-thirds vote and that that would include benefits, contribution rates and/or setting up a reserve. I can check section 2 here. Maybe it would be easier just to ask staff whether there's anything else included in section 2 that would involve supplemental benefits, but I'm not aware of anything.

**Mr. Hardeman:** If I could just go one more, I think you can answer it for me. Your definition of "specified change" isn't changing?

**Mr. Duguid:** No.

**Mr. Hardeman:** So when you're talking about specified changes, it refers to the specified changes presently in the bill?

**Mr. Duguid:** Yes, as defined in the bill.

**Mr. Hardeman:** I'm quite comfortable with that.

**The Vice-Chair:** Any further debate? Seeing none, all those in favour of this motion? All opposed? That's lost.

We're going to skip page 39 until we deal with the motion on page 67. Next is 39(a), a government motion.

**Mr. Duguid:** I move that subsection 26(3) of the bill be struck out and the following substituted:

"Decision about a specified change

"(3) Despite subsection (1), a decision respecting a specified change is not valid unless it is made in one of the following ways:

"1. At a meeting called for the purpose of considering the matter, the sponsors corporation decides to make the specified change and passes a bylaw providing for the specified change by an affirmative vote of two thirds of its members.

"2. At a meeting called for the purpose of considering the matter, the sponsors corporation decides on an



affirmative vote of a majority of its members to refer the matter for consideration under the supplementary decision-making mechanisms described in subsection (4) or (5) and, using those mechanisms, the decision is made with respect to the specified change.”

I have a subsequent motion that will speak to the issue of when it's referred to an arbitrator, but I'll move that then.

In essence what we'll get is that if a two-thirds vote is achieved on a specified change, it will carry. If it's less than 50%, less than a majority, it will lose. If it's between 50% and two thirds, it could go to an arbitrator if a majority of the corporation board members decide to send it there.

I can repeat that if necessary. Do you want me to repeat that?

**Interjections:** Yes.

**Mr. Duguid:** OK. Staff, let me know if that's not correct. That's my read of it.

If two thirds is obtained, a specified change would be approved. If less than 50% is obtained, then the vote would be lost. If it's between 50% and two thirds, then it could go to arbitration, but that would still require a majority vote to send it there. So the members would have to agree on a majority basis that they want to send it to arbitration.

**Mr. Hudak:** Simple majority?

**Mr. Duguid:** A simple majority, yes. Does that describe it?

**Ms. Hope:** Yes, what you've described is the effect of this motion as well as subsequent motions to reflect the transitional section of the bill.

**Mr. Duguid:** That's right.

**Mr. Hardeman:** There's just a little confusion. It seems to me that we've had some debate about what happens when a vote is won and when a vote is lost. It seems to me that with this approach—someone says that between 51% and 66%, two thirds—a vote doesn't win or lose. It would seem to me that if you were voting with the part between 51% and 66% and you lost, you would almost always be in favour of sending it to arbitration. You have nothing to lose and everything to gain by going to arbitration. So what you're really saying is that any vote that doesn't have the support of two thirds of the board is in fact going to go to arbitration, which in the end gives us the worst of all worlds, as the presenters said. We take away the presenters' benefits. They said, “We need to have a clear delineation of a 50% vote so we can make the changes that we want to make as labour, because management has a different view than we do,” and now you're saying that even management can't make any decisions at 50%. Anything between 50% and 66⅔%, an arbitrator is going to decide. I think if there's one thing we heard, it was that everyone agreed it shouldn't be decided by arbitrators, and now we're building in an almost certainty that these types of decisions will go to an arbitrator, because any vote between 50% and 66⅔% is going to go to arbitration. To me, that doesn't make sense.

As the parliamentary assistant said earlier, I think I could support the principle of saying that the two thirds doesn't apply to everything but applies only to specified change, but then you say, “But no, it doesn't apply to all specified changes.” The “specified changes” will have this unique voting system that doesn't exist anywhere else, where the results at a certain point are going to be made by arbitrators. We don't know whether they won or lost, so we're going to make them use arbitrators and the rest go where they might. If we don't get 50% support, then it dies; if we get over 66%, it goes with that vote, and everything in between an arbitrator will decide.

I just can't imagine anyone putting forward that type of proposal, to take away the voting capabilities of everyone in between those two and giving them two votes for one. “You won't count in the first vote, but just remember that you get to decide that it goes to arbitration. Don't worry about the two-thirds vote because we'll likely do better by going to arbitration.” In fact, that's what we've been told by a lot of people, that arbitrating tends not to take into consideration the municipal employers. “We're better off with arbitration than we are with a consensus at the board, so make sure we don't get the two thirds but make sure the vote is over 50%.” Just vote for 50%, go to arbitrators and have a settlement there; take it out of the democratic process and put it in one person's hands.

I can't really imagine that the government would put something like that forward. I just can't see that working.

**Mr. Duguid:** I think the member is correct in saying that it is complex; it certainly is that. The idea is that if more than a majority of members support something, it should be considered further. Remember, if you're dealing with a particular issue, when you're talking about a majority, you've got a proportion of employer representatives and a proportion of employee representatives who may be supporting something.

I guess what we're thinking is that if a majority of committee members want to go in a particular direction but they don't get their two thirds, they should have an opportunity to try to work something out. The idea would be, number one, maybe the committee can work out a compromise so that something doesn't have to go to arbitration and, number two, if that doesn't work, then perhaps that's when you do want to bring in an arbitrator, to make sure that the best decision can be made.

**Mr. Hardeman:** If that was the way it was going to work—and maybe the parliamentary assistant envisions that that's how it's going to work. After a 52% or 51% vote, the bare minimum, I can't imagine anyone within this group of people who have just voted 49% to 51% believing that they could negotiate at some point a two-thirds support for it. They will automatically have won the day by forcing arbitration. To me, that's exactly what everyone told us we should try and avoid. This new model should be run under the auspices of an elected board of representatives of both management and labour, to come up with the best decisions, in the best interests of all the people who are being pensioned. They told us to



make sure it doesn't become the purview of one arbitrator who gets to make all the decisions of the board.

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This really directs us to an arbitrator making all the specified changes in the plan, because as long as you get 50% of the vote of the board, it goes to arbitration. In my mind, there's absolutely no benefit in saying it requires a two-thirds vote. In fact, this may be even worse than just having a majority vote. Now they have to work harder at trying to get a majority vote than they would the other way, because as they're voting, nobody really cares. "We have to have a two-thirds vote for this to pass and if it doesn't pass, guess what? It goes to arbitration." The employer side has told us all along that the one thing we should do within the plan is to make sure it doesn't go to arbitration, or to make sure the plan isn't based on an arbitrator making arbitrary decisions on behalf of the plan and on behalf of everyone involved in the plan.

This amendment, if that's the way it is—and incidentally, I'm not sure if that's what I heard when you read it, so maybe we should have it read again. I just can't imagine anyone designing an amendment like that, which would take out 16% of the people; that the vote doesn't make any difference.

**Mr. Duguid:** You're right, the arbitration part was not in the amendment I read; it's in a subsequent amendment. I brought it into the discussion just so you'd know where we were going with it. The motion I read was just on the two thirds with specified changes. We'll then be moving another motion afterwards which talks about the arbitration aspect. You should have it in front of you. The members have those motions, do they not? With all the paper we have, some of them may not have been able to find them.

*Interjections.*

**Mr. Duguid:** It's hard to keep track of them.

**The Clerk of the Committee (Ms. Tonia Grannum):** It was handed out last week, but it was a separate set.

**Mr. Hudak:** Just a quick question, if I could, to make sure I'm clear. I think it's important to consider those amendments as a package, and I appreciate the parliamentary assistant talking about that. It does make it a bit more complex, but I think it's the best way to go, because we understand then where the government is going with subsequent changes.

If it's between 50% and two thirds, if these amendments carry, it would go to arbitration—the opportunity for a majority vote to go to arbitration.

**Mr. Duguid:** Just in answer to that question, if it's between 50% and two thirds, if a majority of the members chose to send it to arbitration, they could.

**Mr. Hudak:** A simple majority.

**Mr. Duguid:** But it would still require a vote. It wouldn't automatically go.

**Mr. Hudak:** OK. When you said between 50% and two thirds, that means 50% fails and there's a split vote?

**Mr. Duguid:** I'm assuming that would be 50% plus one. Is that a simple majority?

**Mr. Melville:** It would be a simple majority, so if it was 50%, it would be a fail.

**Mr. Hudak:** So a simple majority would hold under what circumstance? That's to refer it to arbitration after a vote is defeated by not achieving a two-thirds vote on a specified change?

**Ms. Hope:** If I could just take one step back, just to make sure we're all clear about this particular motion, as opposed to the other motions that address the transitional features.

**Mr. Hudak:** But it matters, right? It's a package.

**Ms. Hope:** Yes, but if I could, to be clear on this one, which is in the permanent part of the bill, this motion says that if the sponsors corporation makes a decision on a specified change, if it has a two-thirds majority vote, or if it decides, through a simple majority vote, to send the matter to supplementary decision-making, the sponsors corporation has on an ongoing basis the authority to decide what that supplementary decision-making process will be. The transitional part of the bill, which comes later, does set out an initial supplementary decision-making process, and it does provide that before a matter could go to arbitration, the first step is mediation. I just wanted to be clear that the transitional features set that out. The impact of those subsequent motions on the transitional stage: If there's not the two-thirds majority vote, but there is a simple majority in favour of the motion, then it is eligible to be referred for supplementary decision-making, and that requires a subsequent decision with a simple majority vote.

**Mr. Hudak:** Then that would engage the supplementary decision-making mechanisms. They exist in the bill.

**Ms. Hope:** Correct.

**Mr. Hudak:** So there's a mediation stage in between. But Mr. Hardeman's point would be that the default will be that it will end up at arbitration, in all likelihood. Maybe it will be resolved at mediation, but the numbers would suggest, if the numbers didn't change through mediation, that it will end up going to arbitration.

**Ms. Hope:** If a majority of members vote to refer the matter to supplementary decision, and if it goes through mediation and resolution is not reached, then subsequent processes are followed.

**Mr. Hudak:** And if a tie vote occurs on a specified change, what, then, is the outcome?

**Ms. Hope:** The matter is defeated. It's not eligible to go to supplementary decision-making.

**Mr. Hudak:** OK.

**The Vice-Chair:** Mr. Hardeman?

**Mr. Hardeman:** Thank you very much. I don't know the procedure, again, on a point of order, Mr. Chairman. Since it's not subsection 43(11) or (12) we're debating at this moment, with the Chair's permission, I want to go to that section. As I said, the debate—I couldn't understand anybody coming forward with the proposal, and as I read it, it doesn't. I just want to put that on the table. It says that under subsection (11), "The sponsors corporation may decide by an affirmative vote of two thirds of its



members to accept the proposal with or without amendments, or may decide by an affirmative vote of the majority of its members to reject it.”

Then, when we go to the arbitration section, it says, “If the sponsors corporation neither accepts, with or without amendments, nor rejects the mediator’s report, within 30 days after its first meeting after receiving the report, the sponsor corporation may, by affirmative vote of the majority of its members, refer the matter to arbitration.”

It would seem to me that if you had the vote in subsection (11) and you couldn’t get two thirds to support it, then you voted again and got 50% to reject it, which would be one and the same. If you were somewhere in between, if the motion didn’t totally fail—if the motion was 50 plus 1, it wasn’t passed, it would automatically be called to vote again; it would be to reject—then it would not be within 30 days.

I ask the staff this: Within 30 days, there’d be no decision to be made. It wouldn’t go to arbitration because the motion had been rejected. That’s the way I read it. It doesn’t say that you just have one vote, and if it doesn’t have two thirds, it’s over. It actually refers to “or may decide by an affirmative vote of the majority” to reject the motion. Isn’t that the end of the story? Why would you go to the next section if you reject the motion? You couldn’t get it passed, but you could reject it?

**Mr. Melville:** Again, I’m not sure I can answer the question as asked. Are we able to talk about subsection (11) now that it’s in the—

**Mr. Hardeman:** Maybe I could rephrase it, Mr. Chairman.

**Mr. Duguid:** Just on a quick point of order, Mr. Chair: I understand where the member is going to. If we move forward section by section we’ll get to that section and perhaps give staff an opportunity to think about the very complex question he just asked, get clarification on it and have a more substantial answer. It’s 10 to six now. I expect we’re probably not going to get to that section by tonight.

**Mr. Hudak:** On a point of order, Mr. Chair: I do appreciate that the government motion, similar to Mr. Hardeman’s motion, is looking to create that supermajority. My hesitancy in voting on this—I’m inclined to support a supermajority—is that I don’t know what the ramifications are down the road. I’d be glad to move on. Could we just stand this one down until we get to the other section, just so we could understand it? Is that within procedure?

**The Vice-Chair:** Is that agreed?

**Mr. Duguid:** We don’t have a problem with that.

**Mr. Hudak:** Thank you.

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**Ms. Horwath:** On a point of order, Mr. Chair: If we stand it down, it can still be debated after it comes back up? OK, because I have a point.

**Mr. Hardeman:** I don’t object to standing it down. If I could ask one more question before we stand it down, I

just wonder, in subsection (12), where “mediator’s report” comes from?

**Mr. Melville:** It refers to a previous section that’s not before us at the moment, but it would be in section 43. There is a mediator, as my colleague mentioned, as an intermediate step.

**Mr. Hardeman:** The real explanation, then, is that we shouldn’t be jumping out of order with motions.

**The Vice-Chair:** We’ll go to the next motion. It’s an NDP motion, page 40.

**Ms. Horwath:** I move that paragraph 2 of subsection 26(6) of the bill be amended by striking out the portion before subparagraph i and substituting:

“2. When deciding a matter relating to a specified change to the primary pension plan, the arbitrator shall consider the following matters:”

**Mr. Duguid:** I’m just wondering—I’ve got number 39 here. Did we miss 39? We stood the whole section down?

**The Clerk of the Committee:** We stood down the motion on page 39 until we deal with the motion on page 67, and then we stood down 39a because there was agreement. Now we’re on page 40, which is still to section 26 of the bill.

**Mr. Duguid:** That’s fine.

**The Vice-Chair:** Any debate?

**Mr. Duguid:** Very briefly, we believe arbitrators need to take into consideration a variety of elements for decisions on all plans, not just the primary pension plan. This would require the arbitrator to take into account various circumstances outlined in the bill, such as legal requirements relating to pension plans, the advice of the administration committee, the economy of the province and the overall financial state of OMERS employers. This is only with regard to arbitrated decisions for the primary pension plan and not with regard to arbitrated decisions for supplemental plans. As a result, we won’t be supporting it.

**The Vice-Chair:** Any further debate? Seeing none, all in favour? Opposed? That’s lost.

Page 41, an NDP motion:

**Ms. Horwath:** I move that paragraph 4 of subsection 26(6) of the bill be struck out.

This is the issue of the 0.5% cap of pensionable earnings of members of the plan. It’s a limit that we heard over and over again was inappropriate and should be struck, so this motion is one that strikes that cap. It’s pretty clear. A number of members, a number of deputies who came before the committee indicated concern over this cap and, similarly, some of the other caps in the bill. In effect, this motion addresses the removal of the cap.

**Mr. Hardeman:** I have a quick question. As I read this amendment, I see that it has nothing to do with the cap; it has to do with making bylaws of what they’re going to do. If we take that away, that still doesn’t mean they aren’t covered by the cap that’s in the bill in other sections. You can see where, in one place, if one overrides the other, we have a problem. But if it’s not mentioned anywhere, I don’t know why they wouldn’t be



covered by the cap anyway. I don't necessarily support the cap. In my mind, this doesn't change the bill.

**Ms. Horwath:** What it does, though, is it caps the amount of a decision that the arbitrator can have effect on. So what it does is it caps the amount of pensionable earnings of a member of any of the plans that can be addressed.

I don't know if perhaps you're looking at the wrong section, Mr. Hardeman. I'm referring to the restriction that's being put on an arbitrator's decision in this section, and that's why it was raised as something that was of concern. It basically prohibits the arbitrator from making a decision to increase benefits where the result would be an increase in the required contribution rate of more than 0.5% of pensionable earnings of the members of the plan. It is an unnecessary limit since the arbitrator is already required to consider such factors as the economic conditions of the province and the financial state of employers that are participating. In effect, the arbitrator is required to consider all of these factors already, and putting that cap in is not necessary, in the opinion of New Democrats as well as a number of the deputants who came forward.

**Mr. Hardeman:** I apologize. I was looking at the wrong section of the bill, and I stand corrected.

I just have a question to staff on the 0.5%. I know the member proposing the motion suggested—and we heard presentations on it—a cap to the increases or to the value of the pension for a lot of the members of the OMERS plan. Is that what this 0.5% does? Does it have anything to do with that, or is this just the amount by which an arbitrator can increase pensions to anyone in the plan, including the supplementary plans, to see a phased-in approach, as the management side was suggesting was required?

**Ms. Hope:** The impact of this 0.5% is more the latter in your question. It is a limitation on the cost impact of what an arbitrator can award through an arbitration decision.

**Mr. Hardeman:** So it's reasonable, then, to make the assumption when we're talking about the presentation from CUPE group, and they talked about the cap—the lower range of pay, how much they could go up to and what was the maximum of their pension, they're being capped, that's the best they can get—that has nothing to do with this 0.5%?

**Ms. Hope:** Yes. If employee groups were permitted to seek a higher CPP integration rate—I believe that's what you're referring to—there would presumably be some cost associated with that in terms of the impact on contribution rates. If that kind of matter were before an arbitrator, the arbitrator could not make an award that would impact on the contribution rates of each of employers and employees by more than half a percentage point. I don't know if that helps.

**Mr. Hardeman:** Thank you.

**Ms. Horwath:** So if I can, then, what this does in any one arbitration settlement, in any one arbitration decision,

is restrict what the arbitrator can award. The other language I think the member is referring to is just the overall cap, so if this wasn't here and the award was able to be higher than this, it's quite possible that they would still be prevented from making gains because of the other cap. But if this particular cap on arbitration awards were removed, it might be a quicker process over time to move those plans up to a better amount for the members who raised this issue when they came to committee.

**The Vice-Chair:** Any further debate? Seeing none—

**Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell):** Mr. Chair, all I can say in this case is that this section is as much for the employee as it is for the employer. Otherwise, if we were to remove that section, there wouldn't be any cap or limit.

**Ms. Horwath:** I think that if the member had had some time to look through Hansard to see the issue that was raised over and over again, not necessarily with regard to this cap, but the other caps, that's exactly why the caps aren't necessary. It's in both the employer's and the employee's interest to have a reasonable view to what the contribution rates should be. Whether it was CUPE members or firefighters or police or anybody who came to the table, I asked them specifically whether or not they thought that the give and take or the checks and balances of contribution rates increasing, having an effect on both parties, would balance the interests, and in fact they said that it did. So those caps were not necessary. I very much agree with Mr. Lalonde, although I have to say that I think it reinforces my argument more than anything else.

**Mr. Hardeman:** In suggesting that I'm not going to support this amendment, I do believe that the cap is in there to change, whether we agree or disagree with the regime that's changing, to make sure that it's done in an orderly fashion on behalf of both the employer and the employees as it relates to the amount they have to contribute to get the higher benefit plan. I've talked to some people who have concerns, and I think it has been presented to us, that even if it's a much more lucrative plan, they as individuals don't believe that they want to pay that much more in premiums in order to be able to get that when they retire.

I think it was brought forward—and the government side mentioned it a number of times—that not everyone is going to go to the maximum available in a plan, but I think this helps make sure that it doesn't and that everyone will make the transition in what we could consider an orderly fashion. So I will not be supporting this, to eliminate that 0.5%, though I do support the need to look at that other one as we get further into the plan, as it deals with concerns that were presented to us some time back.

**The Vice-Chair:** Further debate? Seeing none, all those in favour? Opposed? That's lost.

This committee now stands adjourned until 3:30 p.m. on Wednesday, December 7.

*The committee adjourned at 1801.*











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Ms. Janet Hope, director, municipal finance branch,

Mr. Tom Melville, legal counsel,

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## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 7 December 2005

# Journal des débats (Hansard)

Mercredi 7 décembre 2005

**Standing committee on  
general government**

Ontario Municipal Employees  
Retirement System Act, 2005

**Comité permanent des  
affaires gouvernementales**

Loi de 2005  
sur le régime de retraite  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 7 December 2005

Mercredi 7 décembre 2005

*The committee met at 1601 in room 151.*ONTARIO MUNICIPAL EMPLOYEES  
RETIREMENT SYSTEM ACT, 2005LOI DE 2005  
SUR LE RÉGIME DE RETRAITE  
DES EMPLOYÉS MUNICIPAUX  
DE L'ONTARIO

Consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act /  
Projet de loi 206, Loi révisant la Loi sur le régime de  
retraite des employés municipaux de l'Ontario.

**The Chair (Mrs. Linda Jeffrey):** The standing committee on general government is called to order. We meet this day to resume clause-by-clause consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act. We will now continue clause-by-clause consideration of the bill. I understand we left off at section 41 of the bill, and we are now dealing with amendment 42.

Mr. Duguid, I gather you're going to read the amendment into the record?

**Mr. Brad Duguid (Scarborough Centre):** I move that paragraph 4 of subsection 26(6) of the bill be struck out and the following substituted:

"4. The arbitrator shall not make a decision to increase benefits under the pension plans which would result in a total increase in any three-year period to the required contribution rate of more than 0.5% of the pensionable earnings of a member of any of the plans."

**The Chair:** Any comments or questions?

**Mr. Ernie Hardeman (Oxford):** For expediency's sake, Chair, I believe we did have the debate on this section; we just didn't have the vote on it.

**The Chair:** So we've had debate. No further comments or questions? Are the members ready to vote? All those in favour? All those opposed? That's carried.

Amendment 43, Ms. Horwath.

**Ms. Andrea Horwath (Hamilton East):** I move that section 27 of the bill be amended by striking out "that in the opinion of the administration corporation"—

**The Chair:** Ms. Horwath, can I interrupt you for just a second? Mr. Hardeman has a point of order.

**Mr. Hardeman:** On a point of order, Madam Chair: I don't remember voting on section 26, as amended.

**The Clerk of the Committee (Ms. Tonia Grannum):** We can't, because we stood down a motion on page 39a. We'll have to come back and deal with all the motions to section 26, and then vote on it.

**Mr. Hardeman:** Thank you.

**Ms. Horwath:** I move that section 27 of the bill be amended by striking out "that in the opinion of the administration corporation constitute fees and expenses of administering the pension plan" and substituting "incurred in relation to its activities under this act."

**The Chair:** Any comments or questions?

**Mr. Hardeman:** I wonder if I could get an explanation as to what the intent of the motion is to change. It seems considerably similar to the motion that's presently in the bill.

**Ms. Horwath:** I believe it's speaking to defining more clearly the issues around what the admin corporation is expected to cover off in regard to costs.

**The Chair:** Any further comments or questions? Seeing none, are the members ready to vote? All those in favour of the motion? All those opposed? That's lost.

Amendment 44, Mr. Duguid.

**Mr. Duguid:** I move that section 27 of the bill be struck out and the following substituted:

"Recovery of certain fees and expenses

"27. The sponsors corporation may require the administration corporation to reimburse it from the pension fund for the primary pension plan for any of its costs that in the opinion of the administration corporation may lawfully be paid out of a pension fund."

**The Chair:** Any comments or questions?

**Mr. Hardeman:** As this relates strictly to the ability of one corporation to bill for services on behalf of the other's responsibility, I wonder about the difference between this—a number of times we've had discussions about the government's commitment to the plan and how much they're willing to put in to facilitate implementation of the plan, or to put forward some direction in the bill that they are prepared to fund an unfunded liability that may presently exist in the plan, as was presented to us by the mayor of Mississauga, who suggested that there is at present quite an unfunded liability. It was suggested at the time by government that whether they were going to do that or not wouldn't be part of this bill, because that's just a matter of the government committing to certain monies and spending of monies, and that wouldn't be part of this bill. I wonder why this

section, then, directly relates to one corporation being able to bill another corporation for services rendered. Why is that required? Wouldn't that be automatic—that if it's the other corporation's services they require, they would pay for those services?

**Mr. Duguid:** It is a slight wording change so it more accurately reflects the need to abide by the law, the current acts. That's really all it is.

**The Chair:** Any further comments or questions? All those in favour of the amendment? All those opposed? That's carried.

Shall section 27, as amended, carry? All those in favour? All those opposed? That's carried.

Ms. Horwath, section 27.1.

**Ms. Horwath:** I move that the bill be amended by adding the following section:

“Arbitration

“27.1 In the event of a dispute concerning the nature of any of the costs incurred by the sponsors corporation that it seeks to have reimbursed under section 27, such a dispute shall be referred to an arbitrator.”

**Mr. Hardeman:** On a matter of procedure, Madam Chair: When we just approved section 27 as it is, would an amendment to add to section 27 be in order?

**The Chair:** I'm going to let the clerk answer that question.

**The Clerk of the Committee:** We're not adding to section 27. We're adding a new section after section 27. So if this were to carry—

**Mr. Hardeman:** We're adding a whole new section?

**The Clerk of the Committee:** Yes, the bill would be renumbered and this would become section 28 and then the renumbering would continue.

**The Chair:** It's actually happened earlier in the bill. You just maybe haven't noticed it, but it has happened previously.

Any questions on the amendment? All those in favour? All those opposed? That's lost.

Section 28, Mr. Duguid.

**Mr. Duguid:** I move that subsection 28(1) of the bill be struck out and the following substituted:

“Fees to fund other activities

“28(1) The sponsors corporation may, by bylaw, require the employers who participate in an OMERS pension plan and the members of an OMERS pension plan to pay a fee for the purpose of funding any of the sponsors corporation's costs that may not lawfully be paid out of a pension fund.”

**The Chair:** Any comments or questions? Seeing none, all those in favour? All those opposed? That's carried.

Shall section 28, as amended, carry? All those in favour? All those opposed? That's carried.

Section 29, Mr. Duguid.

**Mr. Duguid:** I move that subsection 29(3) of the bill be struck out and the following substituted:

“Administration corporation

“(3) The sponsors corporation may enter into an agreement described in subsection (1) only if the

administration corporation has agreed to act as an agent of the administrator of the pension plan or has agreed to manage the pension fund for the pension plan, as applicable, in accordance with the terms of the agreement.”

**The Chair:** Any comments or questions?

**Mr. Hardeman:** If I could ask the parliamentary assistant to explain that one, I'd appreciate it.

**Mr. Duguid:** When entering into agreements, it's important to have the advice from the fiduciary point of view, and this would ensure that that would happen.

**The Chair:** Any other comments or questions? Seeing none, all those in favour? All those opposed? That's carried.

Shall section 29, as amended, carry? All those in favour? All those opposed? That's carried.

Shall section 30 carry? All those in favour? All those opposed? That's carried.

Shall section 31 carry? All those in favour? All those opposed? That's carried.

Section 32, Ms. Horwath.

**Ms. Horwath:** I move that subsection 32(3) of the bill be struck out.

**The Chair:** Would you like to give us some explanation? I'm sure Mr. Hardeman would prefer that.

**Mr. Tim Hudak (Erie-Lincoln):** We all would, Chair.

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**Ms. Horwath:** This refers to the issue around the fiduciary responsibility of one corporation over the other. What we've been saying from the beginning of this process is that the administration corporation should have a broader mandate, other than just the corporate law, with regard to its responsibilities. By deleting the corporate law obligations, we then fall back to the Pension Benefits Act fiduciary responsibilities.

**Mr. Hardeman:** I wonder if we could ask the legal folks to explain what the impact of this would be, maybe by explaining why that section is in the bill and then the impact of removing it.

**The Chair:** Before you begin, please identify yourselves for Hansard.

**Mr. Tom Melville:** I'm Tom Melville, legal counsel, municipal affairs and housing. Subsection 32(3) essentially imports minimum corporate standards into the operations of the sponsors corporation, and each is as it states. For example, section 132, conflict of interest, refers to a provision in the Business Corporations Act dealing with potential conflicts of interests of directors, and similarly with 134(1), the standards of care for those directors. Indemnity is a little different; it would be a provision. It's more of an entitlement for directors to be indemnified in certain circumstances.

Is that sufficient to answer your question, or—

**Mr. Hardeman:** If I could just add, Chair, then by removing or striking out that section, what we're really saying is that we don't have any standard. The mover of the motion suggests that we don't want the corporate standard, but is it unreasonable to assume that if we didn't have a corporate standard, you would have to deal



with those issues in some other way? To deal with what would be the issue of a conflict of interest, and if it's not covered by the corporate standard, what standard is it covered by? Is that a fair assumption?

**Mr. Melville:** Yes. It's fair to say that these are minimum standards, and those standards could be exceeded, for example, by the standards prescribed in the Pension Benefits Act for a pension administrator, which would actually apply to the OMERS Administration Corporation. So there are higher standards in some cases. Also, the common law might apply and require even other standards to apply. But these are minimum standards in the event that, say, something that was in the common law or in the Pension Benefits Act did not apply.

**Mr. Hardeman:** But if the standards in the pension act are higher than these, does this mean that this board does not have to adhere to the higher standard?

**Mr. Melville:** I think it would be reasonable to take the position that they have to comply with the higher standard.

**Mr. Hardeman:** They would have to comply with the higher standard. So this is just a minimum. Taking it out will not increase any standards, and actually, if you took it right out, it would allow standards to go lower?

**Mr. Melville:** It could potentially allow standards to go lower if there were any area which was not dealt with under the Pension Benefits Act, let's say, or the common law.

**Ms. Horwath:** I would like to have a further explanation of the point you're trying to make: that by taking this out, standards would be lowered. I'm not sure what point you're trying to make. I'd prefer if I could get a better description of a situation you're thinking of to help me understand what your advice is.

**Mr. Melville:** I'm not sure if I can give a specific example, but in general, the Pension Benefits Act does prescribe a fiduciary standard of care for pension trustees, and the sponsors corporation would be a pension trustee under this proposed legislation. There may be other areas which deal with matters not directly related to pension administration—it's hard to be specific about what that might be—that would be covered by the provisions in the Business Corporations Act that are prescribed here. In addition, one of the provisions, as I mentioned, is more of an entitlement for directors for indemnification. It's again seen as part of a minimum package for corporate directors.

**Ms. Horwath:** If I can, just to reiterate why there was some concern about this entire issue: Again, it speaks to the decision that the government made in regard to how they've decided to structure the new, autonomous OMERS pension plan. I think this issue was spoken to earlier in the bill as well, and that's the idea that at this point in time, today, there are concerns about some of the previous investment decisions and some decisions that had been made previously by the people who have been managing the OMERS pension plan. What this amendment, and a number of other amendments related to it, is seeking to do is to make sure that the investment deci-

sions by the administration corporation are made with a view to the well-being of the plan members today and into the future, not just the narrow focus that's provided through the corporate law requirements but the broader fiduciary requirements that were seen under the Pension Benefits Act.

I'm not going to belabour the point, but there's one thing that's really important about why some of these amendments were put forward. It's because there is a significant concern about some of the things that have occurred in the past and the lack of redress of pension plan members in terms of these decisions that have negatively affected the assets of the plan. So what I've talked about through this entire process—and I won't continue to do this, because we're getting near the end of the process and I think everybody wants to move on and get through this clause-by-clause—the bottom line is that there is a desire, a need, a wish of many plan members, a large number of plan members, to make sure that there is some accountability built into the relationship between the admin corporation and the sponsors corporation. We don't see that in the way the government has decided to structure this plan, and we would like to see that addressed. This is yet another one of those amendments that would enable or allow for that greater oversight to occur.

**The Chair:** Any further debate? All those in favour of the amendment? All those opposed? That's lost.

**Mr. Hardeman:** On subsection (2), "The administration corporation is not a crown agency and it is not a local board as defined in subsection 1(1) of the Municipal Act": I wonder if staff could explain to me what that implies.

**The Chair:** Mr. Hardeman, can you tell me where you are?

**Mr. Hardeman:** Subsection 32(2). It's not an amendment. It's part of the section that will be the next vote.

**The Chair:** All right. I wasn't sure that staff knew where you were, because I didn't, unless they're telepathic.

**Mr. Hardeman:** I wonder if I can get an explanation of this, as to the difference between what the administration corporation is as it relates to not being a crown corporation. If it's not a local board as defined in subsection 1(1) of the Municipal Act, what is it?

**Mr. Melville:** The present OMERS board, I believe, is a schedule 3 crown agency. With the proposed transfer of the government's responsibility to the municipal sector, I believe that the government's position would be that it's no longer appropriate for that corporation to be a crown agency. That would reflect the first part of 32(2).

The second part, "not a local board as defined in ... the Municipal Act," would be, I believe, a clarification of the status of the corporation, that it could not be considered a local board—in other words, similar to an entity that could be established and is closely allied to a municipality. If it were to have local board status, that could affect its rights and obligations under the Municipal Act and other statutes. So it's a clarification.



**Mr. Hardeman:** We've had a recent situation with another organization that is similar to this. I'm just trying to find out the similarities or the differences, which is the assessment corporation and some challenges they're facing. The Ontario Ombudsman is looking into the operation of the organization. I guess the question will be, when this legislation is passed, will the Ombudsman have responsibility for dealing with the challenges that come out of it as a government organization?

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**Mr. Melville:** I can't answer that question. You would have to look at the mandate of the Ombudsman and see if it covers a corporation that fits the description of the proposed OMERS Administration Corporation.

**Mr. Hardeman:** I was concerned not so much with the Ombudsman but more with the similarities between this board, when we make this definition of what it is not, and how it relates to the municipal assessment corporation, which, when it originally started, was structured similarly to this board. It was set up as a total provincial operation. It was moved outside the provincial realm. It's being run by a board of directors who are municipal people, yet somewhere in that system it relates back to a provincial responsibility. I wanted clarification as to what this one actually does and whether it fits in that same category.

**Mr. Melville:** I'm not entirely certain, but my understanding is that the mandate of the provincial Ombudsman generally does not extend to municipal matters.

**Mr. Hardeman:** I wondered, Madam Chair, if we could ask staff to come back with a report on the relationship between those two, what the difference would be and why this would not be under the same provincial jurisdiction as the assessment corporation.

**The Chair:** OK. The request has been made.

Ms. Horwath.

**Ms. Horwath:** I move that section 32 of the bill be amended by adding the following subsection:

"Co-chairs

"(4.1) The members of the administration corporation shall appoint two members as co-chairs in the following manner:

"1. The members of the administration corporation who represent members or former members of the OMERS pension plans or who are chosen by entities that represent members or former members of the OMERS pension plans shall appoint one co-chair.

"2. The remaining members of the administration corporation shall appoint the second co-chair."

**The Chair:** Any debate?

**Mr. Hudak:** As I said when faced by a similar amendment by Ms. Horwath for the sponsors corp, I understand the point of view she's taking and I understand that a number of groups supported that co-chair model, but as I said before, I will oppose this motion because I believe that its practice, from what I've learned at this committee, is to maintain a single chair, as the board has had already for some time. Then the sponsors

corp, if I understand it, will pass bylaws affecting the admin corp. Am I right? The sponsors corp will be able to put forward a bylaw on the structure of the admin corp, or would the admin corp do the bylaw?

**Ms. Janet Hope:** I'm Janet Hope, director of the municipal finance branch at the Ministry of Municipal Affairs and Housing. The sponsors corporation could have a bylaw that would change the composition of the administration corporation.

**Mr. Hudak:** Thank you, to staff. So again, as I said before, the new sponsors corporation would have the ability to decide if they wanted a single chair or co-chair model down the road, and I think it's best to leave it in their hands. Therefore, I'll be voting against this particular motion, number 49.

**The Chair:** Any further debate? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 32 carry?

**Mr. Hudak:** Section 33.

**The Chair:** Thanks, but we're not there yet. I wish we were.

Shall section 32 carry? All those in favour? All those opposed? That's carried.

Ms. Horwath, you have the next one, section 33.

**Ms. Horwath:** I move that subsection 33(2) of the bill be struck out and the following substituted:

"Transition

"(2) The sponsors corporation shall ensure that in any bylaw adopted under subsection (1) the entitlement of organizations that represent employees to choose members of the administration corporation shall be allocated among those organizations based on the number of employees who are members of the OMERS pension plans that each organization represents for collective bargaining."

**The Chair:** Any debate?

**Mr. Hudak:** I want to raise the same points I brought forward similarly in discussing the sponsors corporation. I know that if Ms. Horwath's amendment does not pass and the structure of 33 stays largely the same, this means the existing administration board of OMERS would continue on in their positions until one of two things: the anniversary, in which case there would be changes in position according to sections 44 and 45, or, if the sponsors corp becomes sort of the new bylaw, they would change that direction.

The general point I make is that because of the substantive nature of the transfer and the importance of the OMERS pension to so many members in Ontario, I think it's fair for the agencies committee to have the opportunity to call forward members who are transitioning on to the board, the current members, as well as any future appointments that may take place during the transition time. I understand that the bill does not currently allow for that, but we could always ask for a commitment from the ministry that the agencies committee could call, if they so chose, the initial appointments to the administration corp to come before the agencies committee. So



I would ask again if the parliamentary assistant could give that commitment on behalf of the minister that the transitional nominees to the admin corp could be called before the agencies committee.

**Mr. Duguid:** I'm sure the member will recall my previous answer, which I gave to him three or four times. I'm sure he'll continue to ask the question three or four times today as well, but all the proper procedures will be followed.

**Mr. Hardeman:** I didn't have any questions until I heard that answer. It would seem to me that as we're debating this bill, the proper procedures are what need to be put in this bill so we all know what they will be when the time comes. To have a question about how the board will be structured and who will have input into that—to me, the question isn't answered by saying, "All the proper procedures will be followed." I need to know what those procedures are before I can make a decision on whether we're having a board that will function as it should to provide the services that are needed.

An answer to that other question would be helpful because then we'd know what the procedures are. But if we're not assured that that process is going to be followed, then I'd like to know what is going to be followed and how we are going to have a board that's going to meet the needs of the plan participants.

**The Chair:** Mr. Duguid, I don't know if you can answer this question at this point.

**Mr. Duguid:** Again, all the procedures for appointments will be followed. This legislation isn't about the appointments process overall. If it were, then we could debate that, but it's not, so the proper procedures will be followed for these appointments, as with most appointments, if not all.

**Mr. Hudak:** Just to be a bit more clear. The parliamentary assistant would say that no, they're not going to be allowed to be called to the agencies committee. He uses the term "proper procedures." In my view, the proper procedure is that they should be called if somebody wanted them to. I think that would be proper. If Mr. Parsons or Ms. Horwath or Ms. Scott wanted to call them before the committee, that would be a proper thing to do. I think, properly, the committee may have questions for them about their intent as the first appointees to the new OMERS structure.

The usual process—or the process if you follow the standing orders—would be that they would not be called. If the parliamentary assistant is saying no, then that's fine; just say no. I just believe that—and I'd love to have the minister's commitment—the committee could call its members if a committee member so chose.

**The Chair:** Any further debate? Seeing none, all those in favour of the amendment that's on the floor? All those opposed? That's lost.

Mr. Duguid, you have the next amendment.

**Mr. Duguid:** I move that subsection 33(2) of the bill be struck out and the following substituted:

"Transition

"(2) Despite subsection (1), the composition of the administration corporation is determined as follows for the following periods of time:

"1. The composition of the administration corporation is as determined under section 44 for the period commencing on the day that subsection 32(1) comes into force and ending immediately before the first anniversary of that day or when the sponsors corporation passes a bylaw under subsection (1), whichever is earlier.

"2. If the sponsors corporation has not passed a bylaw under subsection (1) on or before the day that is the first anniversary of the day that subsection 32(1) comes into force, the composition of the administration corporation is as determined under section 45 for the period commencing on the first anniversary and ending when the sponsors corporation passes a bylaw under subsection (1)."

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**The Chair:** Any debate?

**Mr. Hardeman:** If I could get the rationale for the change, I'd appreciate it.

**Mr. Duguid:** Sure. It allows the sponsors committee to amend the composition of the admin corporation during the first year.

**The Chair:** Any further comments? All those in favour of the amendment? All those opposed? That's carried.

Mr. Duguid.

**Mr. Duguid:** I move that subsection 33(3) of the bill be struck out and the following substituted:

"Eligibility

"(3) A person who is a member of the sponsors corporation is not eligible to hold office as a member of the administration corporation or to be appointed to any committee established for the purpose of advising the administration corporation."

**The Chair:** Any debate?

**Mr. Hardeman:** I support that someone shouldn't be a member of both corporations. I'm a little concerned with the wording "be appointed to any committee ... for the purpose of advising." It would seem to me that there may very well be people involved in the sponsors corporation who have the expertise and who would do very well to advise, recognizing that that wouldn't allow them to make any decisions on behalf of the administration corporation. But it seems to be going to great lengths to avoid any of that expertise getting from one group to the other, when both have the best interests of the plan at heart. It would seem to me that the plan would likely be well served to be able to access some of that advice.

**Ms. Horwath:** It's interesting. It seems to me that this amendment is yet another attempt of the government to make sure that that division, that line between the sponsors corporation and the admin corporation, is extremely solid and can never be traversed. Interestingly enough, it's totally the opposite of some of the work that we've been trying to put forward on this bill.

Had it not been indicated that the sponsors corporation members couldn't sit on a committee to advise the admin



corporation—interestingly enough, if there were committees struck off the sponsors corporation and put in place to advise the admin corporation about what the best interests of the plan members were, that actually might not be such a bad thing, because it's really the plan members' pensions that we're talking about. It's their pension plan.

Quite interestingly, I won't support this, because I think it's doing the opposite of some of the things we've been trying to put forward, which is to get some accountability and ability of the sponsors corporation plan members to have oversight, advice and feedback into what's happening and the decisions being made with their pensions. I won't be supporting this, because I think it does the opposite.

**The Chair:** Further debate? Seeing none, all those in favour? All those opposed? That's carried.

Ms. Horwath, amendment 53.

**Ms. Horwath:** I move that subsection 33(4) be amended by striking out "and members are eligible to hold office for a maximum of six consecutive years" and substituting "and members may hold office for successive terms."

Very briefly, this is similar to the previous amendment I brought forward, which is to indicate that people gain experience and knowledge and history when they have some time to serve on these kinds of corporations. It's important to acknowledge that and not just assume that they should be out the door after six years.

**The Chair:** Further debate?

**Mr. Hudak:** I have a quick question to the staff. I think I asked a similar question on the sponsors committee. Would the sponsors committee have the ability by bylaw to implement what Ms. Horwath is asking on a permanent basis?

**Ms. Hope:** The government has two motions that would, if they were both passed, have the effect of giving the sponsors corporation the ability to set the terms and whether or not there could be successive terms.

**Mr. Hardeman:** To the parliamentary assistant, my understanding is that, though it's not the law, most government agency appointments are six-year terms, and then they change. I don't think it's the law, but I think that's the practice, is it not?

**Mr. Duguid:** I don't know. I can't answer that question.

**The Chair:** Any further debate? All those in favour? All those opposed? That's lost.

Mr. Duguid.

**Mr. Duguid:** I move that subsection 33(4) of the bill be struck out and the following substituted:

"Term of office

"(4) The term of office of each member of the administration corporation is as determined by bylaw of the sponsors corporation."

**The Chair:** Any comments or questions?

**Mr. Hudak:** I think staff is anticipating this. I appreciate where Ms. Horwath is coming from. As my colleague Mr. Hardeman indicated, there tends to be a

tradition on most boards that you have two terms and then you move on, although there are survivors like the honourable Andy Brandt, who keeps going and going, doing a good job as the chair of the LCBO no matter who's in government.

I think it's quite fair for the sponsors corporation down the road to make the determination as to whether members can stay on for more than two consecutive terms or not. I think this is a much more fair approach than the province dictating from the beginning.

**The Chair:** Any further debate?

**Mr. Hardeman:** Could I ask the parliamentary assistant for a quick explanation of the change? I'm not quite sure of the intent of the amendment. It's just that the board is going to be decided by the sponsors corporation. Is that right? What else is being taken out?

**Mr. Duguid:** The administration corporation is going to require some very professional opinions and people with great expertise and abilities to make some very important decisions, so when they do find somebody they may want to keep for a longer period of time and allow that expertise to continue into the future, it gives them the capability of doing that.

**Mr. Hardeman:** I don't quite understand it. We've just got through saying that the maximum term is six years. Is that not in here? I'll say it this way: It's the sponsors corporation, with everything that's in the bill, that's going to decide the term of office for all members of the administration corporation.

**The Chair:** Mr. Duguid, do you want staff to answer this question, or are you comfortable answering it?

**Mr. Duguid:** I'm not sure what he's referring to. What this does is fairly simple. It allows the sponsors corporation to appoint the administration corporation members and to extend their terms. It gives them that capability should they so wish. I don't think there's anything more than that.

**Mr. Hardeman:** I'm trying hard to understand this. We've spent three days trying to make sure the corporations are totally separated, that never the twain shall even have a meeting together or have a committee that advises them together. And now we have a motion that says the sponsors corporation can appoint the term of office for the administration corporation.

**Mr. Duguid:** That was always going to be the case; that, at some point in time, the sponsors corporation would make the appointments to the administration corporation, as far as I know.

**The Chair:** Any further debate? All those in favour of the amendment? All those opposed? That's carried.

**Mr. Hudak:** On section 33, now amended, I wanted to register two concerns. The parliamentary assistant just talked about the importance of expertise on the administration corporation. I think that does reinforce the call by opposition members to enable the agencies committee to call forward the initial appointees to the admin corp who are on the admin board today, but I think due diligence should allow for the agencies committee to call those members if a member of the committee so saw fit.



Secondly, I know the government and my colleague Ms. Horwath have a number of amendments with respect to the transitional appointments—sections 44 and 45. We'll see how those change.

There was concern raised at committee by a significant number of groups about the unwieldy mechanism that currently exists in the bill, this rotation notion of determining which employer groups or employee groups have how many members and then trying to determine from there who would be the subsequent owner of the seat, so to speak, for the next term until the sponsors corp changed the bylaw. There was concern brought about groups coming together and the length of time it would take one particular group to have another shot at getting a chair on the committee, given the great number of employer-employee groups that would go through that rotation.

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I'm not convinced that the existing mechanism is the appropriate one. I guess it is important to have some sort of transitional plan in the bill to anticipate, if the sponsors corp does not come up with an overall game plan, but nonetheless, I think we need to reflect on the advice we received from a diverse number of groups suggesting that it was an unwieldy mechanism.

That having been said, we'll see what the amendments actually say to those sections. But for those two reasons, that's why I'll be opposing section 33: the concern over the transition mechanisms for subsequent seats on the corp, and secondly, the lack of commitment to enable the agencies committee to call intended appointees to the administration corp before them.

**The Chair:** Thank you. Shall section 33, as amended, carry? All those in favour? All those opposed? That's carried.

Section 34, Mr. Duguid.

**Mr. Duguid:** I move that paragraph 2 of section 34 of the bill be struck out.

Just for the sake of the members opposite, it's apparently redundant.

**The Chair:** Any further debate?

**Mr. Hardeman:** I would like to request some reassurance. "Apparently": I'd like to know whether it is or it isn't.

**Mr. Duguid:** I've been advised by staff that it's redundant.

**Mr. Hardeman:** OK. Thank you.

**Ms. Horwath:** I'd just put on the record that the section we're talking about concerns the objects of the admin corporation. Again, it doesn't speak to any accountability to the sponsors corporation, so I will not be supporting that motion.

**The Chair:** Any further debate? All those in favour of the amendment? All those opposed? That's carried.

Shall section 34, as amended, carry? All those in favour? All those opposed? That's carried.

Ms. Horwath, section 35.

**Ms. Horwath:** I move that clause 35(2)(a) of the bill be struck out and the following substituted:

"(a) administer the OMERS pension plans, including,

"(i) paying pensions,

"(ii) making payments under retirement compensation arrangements,

"(iii) developing investment policies and investment plans, and

"(iv) managing and allocating the assets of the pension plans and the assets of the administration corporation in accordance with investment policies and investment plans approved by the sponsors corporation under section 35.1."

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's lost.

Ms. Horwath, you have the next one.

**Ms. Horwath:** I move that clause 35(2)(b) of the bill be struck out and the following substituted:

"(b) provide for the actuarial valuation of the OMERS pension plans, including determining the actuarial methods and assumptions, and developing proposed funding policies for the OMERS pension plans."

**The Chair:** Any debate? All those in favour? All those opposed? That's lost.

Ms. Horwath.

**Ms. Horwath:** I move that section 35 of the bill be amended by adding the following subsection:

"Same

"(4) Within 30 days of receipt of a request, the administration corporation shall provide the sponsors corporation with a copy of any bylaws or resolutions passed by the administration corporation under subsection 35(3)."

**The Chair:** Any debate? All those in favour? All those opposed? That's lost.

Shall section 35 carry? All those in favour? All those opposed? That's carried.

Ms. Horwath, section 35.1.

**Ms. Horwath:** I move that the bill be amended by adding the following section:

"Investment and funding policies, etc.

"35.1(1) Within 90 days after subsection 32(1) comes into force, the administration corporation shall,

"(a) develop proposed investment policies for the assets of the OMERS pension plans and a proposed investment plan for the following 12 months and submit a statement of its proposed investment policies and its proposed investment plan to the sponsors corporation for approval; and

"(b) develop a proposed funding policy for the OMERS pension plans and submit a statement of its proposed funding policy to the sponsors corporation for approval.

"Approval

"(2) The sponsors corporation may approve the proposed investment policies, the proposed investment plan and the proposed funding policy or refer any or all of them back to the administration corporation for further consideration and resubmission for approval by the sponsors corporation.

"Annual investment plan

“(3) The administration corporation shall submit its proposed investment plan to the sponsors corporation for approval on an annual basis and subsection (2) applies with necessary modifications in respect of each proposed investment plan.

“Investments to comply with approved investment policies, etc.

“(4) The administration corporation shall not make any investment with the assets of the pension plans or its own assets if the investment is not in accordance with the investment policies and investment plan most recently approved by the sponsors corporation.”

**The Chair:** Any debate? No? Do you want to speak to it, Ms. Horwath?

**Ms. Horwath:** I'm not going to belabour it, but this is the crux of the issue around the belief that the plan members, whose pensions we are talking about, whose pensions we are dealing with in the devolution, if you want to call it that, of OMERS from under the wing of government to a more autonomous body—it's their pension plans; it's their money; it's their future security. What this addition does is provide them with a say over how those investments are dealt with into the future.

Again, this doesn't come out of the clear blue sky. There are significant concerns that have occurred in the past with the investment policies and with the investments and some of the structural decisions that have been made with these pension plans in the past. What this does is basically ensure that the oversight that I've talked about throughout some of the more minor amendments in the bill is pretty much embodied with this particular addition.

**The Chair:** Any further debate? All those in favour of the amendment? All those opposed? That's lost.

Shall section 36 carry? All those in favour?

**Mr. Hudak:** Debate.

**The Chair:** Mr. Hudak.

**Mr. Hudak:** Chair, I'm sorry—35 or 36?

**The Chair:** Section 36. We've already voted on 35.

**Mr. Hudak:** Oh, she added on 35.1. OK.

Before we go on to 36, I have a recommendation here. The government recommends voting against section 36 of the bill. As near as I can understand it, the government is recommending voting against a section that the government itself wrote.

**Mr. Duguid:** Staff have advised that this has already been covered off in section 21.

**The Chair:** Any further debate?

**Mr. Hardeman:** Yes. It's a procedural thing: I wonder how advice on how I should vote would become part of the set of amendments.

**The Chair:** I have no idea how the amendments are compiled.

**Mr. Hardeman:** No, but somebody brought forward the amendments and they were sent to my office with a whole list of every party's recommendations. I'm just curious how a recommendation on how I should vote becomes part of that package.

**Mr. Duguid:** I'm sorry; the government side gets the recommendations when the opposition move to vote against a clause. We get the same information back as well. It's really just the way it's been done.

**Mr. Hardeman:** I guess I'm just presuming that the government side sent those to the clerk's office. I would suggest that it would be absolutely inappropriate.

**The Chair:** Any further debate on section 36?

**Mr. Hudak:** If the government recommends something, Chair, should we listen?

**The Chair:** I'm trying to be non-partisan, Mr. Hudak. Would you like to get ready to vote on section 36?

**Mr. Hudak:** I'm curious for your reply.

**The Chair:** Shall section 36 carry? All those in favour? All those opposed? That's lost.

Ms. Horwath, you have amendment 60.

**Ms. Horwath:** I move that section 37 of the bill be amended by adding the following subsection:

“Same

“(3) Within 10 days after finalizing the report under subsection 37(1), the administration corporation shall give a copy of the report to the members of the sponsors corporation.”

Briefly, this is just a matter of transparency between the decisions of the admin corporation and timeliness of reports.

**The Chair:** Mr. Hardeman, are you trying to signal, or are you just—

**Mr. Hardeman:** No, I'm just studying the information.

1650

**The Chair:** Any further debate? All those in favour of the amendment? All those opposed? That's lost.

Shall section 37 carry? All those in favour? All those opposed? That's lost.

Section 37.1.

**Ms. Horwath:** I move that the bill be amended by adding the following section:

“Response to requests from sponsors corporation

“37.1 Without limiting the generality of subsection 16(2), within thirty days of receipt of a request, the administration corporation shall provide the sponsors corporation with any of the agreements, contracts, information, and reports described in subsection 25(2) as may be requested by the sponsors corporation.”

**Mr. Hudak:** If I could, before voting on this proposed amendment, number 61, have an understanding of what it will do?

**Ms. Horwath:** The idea is that it requires that information be provided to the sponsors corporation as is requested by the sponsors corporation. It speaks to the desire to have some oversight as to what the admin corporation is doing with the money of the plan members and their pensions.

**The Chair:** OK. Any further debate? All those in favour of the motion? All those opposed? That's lost.

Section 38.

**Mr. Duguid:** I move that subsection 38(1) of the bill be struck out and the following substituted:



"Initial composition of the sponsors corporation

"38(1) On the day on which subsection 22(1) comes into force, the sponsors corporation is composed of 22 persons to be appointed by the Lieutenant Governor in Council."

**Mr. Hudak:** So 22 would include voting and non-voting members?

**The Chair:** Is it a question to staff?

**Mr. Hudak:** Maybe the staff, just to be on the safe side.

**Ms. Hope:** Only voting members.

**Mr. Hudak:** So there would be 22 voting members?

**Ms. Hope:** Correct.

**Mr. Hudak:** Help me anticipate. I know there are some amendments that are coming forward. We'd be increasing the size of the sponsors corp from 16 voting members to 22 voting members. Am I following this correctly?

**Ms. Hope:** Yes. As introduced, the bill says 16 voting and two non-voting, and that is replaced by 22 voting.

**Mr. Hudak:** So we have an increase, then, of four members. There are no more non-voting members who would be on the board?

**Ms. Hope:** Correct.

**Mr. Hudak:** Just to anticipate the upcoming amendments, who are the additional four members, or what groups will they represent? What's the reason behind increasing the total number of board members from 18 to 22?

**Ms. Hope:** The rationale for the increase in numbers is to better reflect the range of groups which have significant representation among the members or the employers of the plan, and to better ensure that their representation on the sponsors group is more representative of their representation among members.

**Mr. Hudak:** So the four additional members will represent which groups?

**Ms. Hope:** There are additional members for both AMO and CUPE, there are additional members for the city of Toronto, there is a retiree representative moving from non-voting to voting, and there is a representative for unaffiliated and management employees.

**Mr. Hudak:** Last question, if I could: Those who previously, under the unamended bill, had been non-voting members—one of those would be representing retirees, and now that individual would be a voting member. What happens to the other original non-voting member?

**Ms. Hope:** There was another non-voting member on the employer side who could be a retiree, I think was the language in the bill. That position is removed, because there are increases in other employer representatives, the other groups.

**Mr. Hudak:** So the balance of 11 from the employer side and 11 from the employee side is maintained?

**Ms. Hope:** Correct.

**Mr. Hudak:** Thank you, Chair.

**The Chair:** Any further debate? Seeing none, all those in favour of the motion? All those opposed? That's carried.

**Mr. Duguid:** I move that subsection 38(1) of the bill be struck out and the following substituted:

"Initial composition of the sponsors corporation"—

**The Chair:** Mr. Duguid, you're on 63.

**Mr. Duguid:** Oh, sorry. We're at 63? OK. Here it is.

I move that subsection 38(2) of the bill be struck out and the following substituted:

"Term of office

"(2) The term of office of a member appointed under subsection (1) expires immediately before the first anniversary of the day on which subsection 22(1) comes into force or when the sponsors corporation passes a bylaw under subsection 23(1), whichever is earlier."

**The Chair:** Any debate?

**Mr. Hudak:** Just a quick reminder: Subsection 22(1) deals with "the first anniversary of the day on which subsection 22(1) comes into force."

**Ms. Hope:** Subsection 22(1) is the section in the permanent part of the bill which establishes the sponsors corporation. We're now dealing with the transitional part of the bill.

**Mr. Hudak:** So a year after the sponsors corp comes into existence, or after they pass a bylaw in their term of office?

**Mr. Duguid:** What this will do is allow the sponsors corporation to pass a bylaw to change the composition of the sponsors corporation during that transition year.

**Mr. Hudak:** The first year; OK.

**The Chair:** Any further debate?

**Ms. Horwath:** Just very briefly, members of the committee might recall that there was a significant point made—I think it was significant, I must say—around the fact that the process of the bill being brought forward, going through the lengthy hearings we're having now and, I would suspect, again after second reading, and then the time that it takes after third reading and royal assent to take place—that during that period of time, if there is a commitment made to do so, we could accomplish a sponsors corporation being established without having to have a transitional one in place in the interim.

I'm not going to support this, because I believe that there is an opportunity to actually have a sponsors corporation that's representative of the various groups in place without having to go through the transitional phase.

**The Chair:** Any further debate? All those in favour of the amendment? All those opposed? That's carried.

Ms. Horwath, you have amendment 64.

**Ms. Horwath:** I move that subsection 38(3) of the bill be struck out and the following substituted:

"Co-chairs

"(3) The voting members of the sponsors corporation shall appoint two members as co-chairs in the following manner:

"1. The voting members of the sponsors corporation who are chosen by entities that represent employees shall appoint one co-chair.

"2. The remaining voting members of the sponsors corporation shall appoint the second co-chair."



**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's lost.

**Mr. Duguid:** I move that subsection 38(3) of the bill be amended by striking out "voting members" wherever it appears and substituting in each case "members."

**The Chair:** Any further debate?

**The Clerk of the Committee:** We need to stand this one down until we get to the motion on page 67.

**The Chair:** So I'm going to go to section 39, which is amendment 66. Ms. Horwath.

**Ms. Horwath:** I move that subsection 39(1) of the bill be amended by striking "and after the first anniversary of."

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's lost.

**Mr. Duguid,** amendment 67.

**Mr. Duguid:** This is going to be a fun one, Madam Chair.

I move that section 39 of the bill be struck out and the following substituted:

"Subsequent composition of the sponsors corporation

"39(1) If the sponsors corporation has not passed a bylaw under subsection 23(1) on or before the first anniversary of the day that subsection 22(1) comes into force, the composition of the sponsors corporation for the period commencing on that first anniversary and ending when the sponsors corporation passes a bylaw under subsection 23(1) is composed of the following persons to be chosen in the manner indicated:

"1. Five persons to be chosen by the Association of Municipalities of Ontario.

"2. One person who is representative of school boards, to be chosen in accordance with subsection (2).

"3. One person to be chosen by the Ontario Association of Police Services Boards.

"4. Two persons to be chosen by the city of Toronto.

"5. Two persons who are representative of other participating employers, to be chosen in accordance with subsection (3).

"6. Five persons to be chosen by the Canadian Union of Public Employees (Ontario).

"7. One person to be chosen by the Police Association of Ontario.

"8. One person to be chosen by the Ontario Professional Fire Fighters Association.

"9. One person to be chosen by the Association of Municipal Managers, Clerks and Treasurers of Ontario.

"10. Two persons who are representative of other members of the OMERS pension plans, to be chosen in accordance with subsection (4).

"11. One person who is representative of former members of the OMERS pension plans, to be chosen in accordance with subsection (5).

"Representative of school boards

"(2) The person referred to in paragraph 2 of subsection (1) is to be chosen by the Ontario Public School Boards' Association and his or her replacement is to be chosen by the Ontario Catholic School Trustees'

Association; thereafter, the replacement is to be chosen on an alternating basis by the associations.

"Representatives of other participating employers

"(3) The two persons referred to in paragraph 5 of subsection (1) are to be chosen as follows by those employers who are not members of an organization described in paragraph 1, 2, 3 or 4 of subsection (1):

"1. The person who is to be chosen by the employer who has the greatest number of"—

**The Chair:** Mr. Duguid, could you go back to number 1?

1700

**Mr. Duguid:** "1. The first person is to be chosen by the employer who has the greatest number of members in the primary pension plan.

"2. The second person is to be chosen by the employer who has the second-greatest number of members in the primary pension plan.

"3. When a person's term of office expires, his or her replacement is to be chosen by the employer who has the next-greatest number of members in the primary pension plan on the expiry date of the person's term of office. This step is repeated when replacement persons are required until all the employers have chosen a person.

"4. When all the employers have chosen a person, the next replacement is to be chosen by the employer who has the greatest number of members in the primary pension plan, and the steps described in paragraphs 2 and 3 are repeated.

"Representatives of other members

"(4) The two persons referred to in paragraph 10 of subsection (1) are to be chosen as follows on behalf of those members of the OMERS pension plans who are not represented, directly or indirectly, by an organization described in paragraph 6, 7, 8 or 9 of subsection (1):

"1. The sponsors corporation shall make inquiries to determine what organizations, if any, represent any of the applicable members of the OMERS pension plans and to determine how many of those members each organization represents.

"2. The sponsors corporation shall rank the organizations according to the number of those that each of them represents, and the organization representing the greatest number of those members"—

**The Chair:** Mr. Duguid, could you go back and start number 2, the second line? Or just start number 2 again.

**Mr. Duguid:** "2. The sponsors corporation shall rank the organizations according to the number of those members that each of them represents, and the organization representing the greatest number of those members is the largest organization.

"3. The sponsors corporation shall invite the largest organization to choose the first person and the second-largest organization to choose the second person, all within the period specified by the sponsors corporation.

"4. If any of those organizations fails to choose a person within the specified period, the sponsors corporation shall invite the next-largest organization to choose the person within the period specified by the sponsors



corporation. This step is repeated until both persons have been chosen.

"5. When a person's term of office expires, the sponsors corporation shall invite the organization that is the next-largest at the time the replacement person is required to choose the person. This step is repeated when replacement persons are required until all the organizations have been invited to choose a person.

"6. When all the organizations have been invited to choose a person, the sponsors corporation shall invite the largest organization to choose the next replacement person, and the steps described in paragraphs 3 to 5 are repeated with necessary modifications.

"Representative of former members

"(5) The person referred to in paragraph 11 of subsection (1) is to be chosen as follows on behalf of former members of the OMERS pension plans:

"1. The sponsors corporation shall make inquiries to determine what organizations, if any, represent any of the former members of the OMERS pension plans and to determine how many former members each organization represents.

"2. The sponsors corporation shall rank the organizations according to the number of those former members that each of them represents, and the organization representing the greatest number of those members is the largest organization.

"3. The sponsors corporation shall invite the largest organization to choose the person within the period specified by the sponsors corporation.

"4. If the organization fails to choose a person within the specified period, the sponsors corporation shall invite the next-largest organization to choose the person within the period specified by the sponsors corporation. This step is repeated until a person is chosen.

"5. When a person's term of office expires, the sponsors corporation shall invite the organization that is the next-largest at the time the replacement person is required to choose the person. This step is repeated when replacement persons are required until all the organizations have been invited to choose a person.

"6. When all the organizations have been invited to choose a person, the sponsors corporation shall invite the largest organization to choose the next replacement person, and the steps described in paragraphs 3 to 5 are repeated with necessary modifications.

"Term of office

"(6) The term of office of a person chosen under this section is three years, unless the term is changed or the appointment of the person is terminated by a bylaw passed by the sponsors corporation.

"Vacancies

"(7) If a person ceases to hold office before his or her term of office expires, the same organization that chose the person may choose his or her replacement to hold office for the remainder of the unexpired term.

"Chair

"(8) The chair of the sponsors corporation is to be chosen by the members of the sponsors corporation from among the members."

**The Chair:** Any debate?

**Mr. Hudak:** Just a question, appropriately, to staff: Who was the poor staff person who had to write that particular amendment, and how many nights' sleep were lost?

I won't belabour this particular amendment. I just want to note a couple of things for the record. I anticipate we'll have a chance at second-reading committee hearings, hopefully, to hear from various groups about this.

It does a couple of interesting things. It does create two positions for the city of Toronto—which they did ask for, if I recall, at committee hearings. We're in an odd situation—well, unique—as far as I know, in Ontario's municipal history, where the city of Toronto has now left AMO and stands out as their own structure. I don't know if this anticipates that that will be a permanent reality in the province of Ontario, or if the government hopes that Toronto will return to being part of the AMO fold. If that's the case, does that have any implications for Toronto having two separate seats?

Also, on the Toronto issue, while the employer, the city of Toronto, has two designated positions, there are no designated positions for employee groups of the city of Toronto specifically.

**Ms. Hope:** Correct.

**Mr. Hudak:** So you're going to have two employer reps from the city of Toronto, but CUPE or other organizations may not necessarily pick Toronto members. While the new board will have the Toronto voice on the employer side, that Toronto voice, so to speak, is absent on the employee side. Granted, this is all for the initial composition of the sponsors corp, and we'll see what happens down the road. It may very well be that the future sponsors corp will take its initial directions from the province and follow a similar pattern. So that's a bit of a precedent that has been set with respect to the city of Toronto in two interesting ways.

There was a discussion, I think, too, among the various union groups about representation. OPSEU and others had talked about wanting representation. CUPE now will go from three to five seats. CUPE did call for more representation. That's very fair, and it's now reflected here in the amendment. But it'll be interesting to see if now the greater disparity between what CUPE receives and what other employee groups receive will cause some concern at committee or if it will be broadly supported.

I also notice now that the school boards will have to share a seat. It's probably the case that the public school board association and the Catholic school board association will have their arguments from time to time. They may not always agree on particular issues, given the history of the two school systems in the province of Ontario. Maybe they will largely agree on pension issues. But instead of each having a seat, now they're going to have to alternate seats, at least as long as this structure survives.

There was one more note I wanted to make on the structure, but it seems to be slipping my mind from my last set of notes.



Police and fire stay basically the same—losing, I guess, in relative strength, since the board is going to increase from 16 voting members to 22 voting members.

Anyway, I'll just leave that out there. I'll look forward, hopefully, to the opportunity in second-reading hearings to see if this new structure will be greeted favourably or with disfavour by the participating groups.

**Mr. Hardeman:** As was mentioned, it's quite an amendment. We have many bills go through the Legislature that aren't quite this lengthy. This being an amendment to a bill, it's quite a size.

First of all, I just want to reiterate what my colleague Mr. Hudak mentioned: the fact that we are under the understanding that we will be having more committee hearings when this bill goes for second reading to make sure that we do hear from the people whom we heard from the first time, and to make sure that we hear from them whether the changes that are being made will be of benefit to the people in the plan.

Two very quick questions, I suppose: Having gone through all the process of designing a system that will select a board, if they can't, in that first year, put a board together, is there an assumption that the board would use this as the format for their bylaw, that this would be a great way to structure the board for future uses?

Before you answer that one, I would just ask the other one. I have a little problem with how you would pick the pensioner representative, seeing as, once they're pensioned off, they're not members of any other body any more, other than they're OMERS pensioners. You say it's picked by the largest employer group or the largest group of them. When they become pensioners, aren't they all one group?

1710

**Mr. Duguid:** The expectation would be that the sponsors corporation would ultimately determine what their own makeup will eventually be. This may be a model they want to follow; it may not be. They may have some other ideas. They may want to change the numbers or something like that, or the representation. They'll have the ability to do that, as far as I can tell.

The second question—I'm sorry—

**Mr. Hardeman:** The representatives of the pensioners.

**Mr. Duguid:** Yes. There is an organization that represents the retirees. I would have to check to see whether in fact—the initial appointment will be made—they would have the ability to have a representative of that group or whether somebody would be selected by the actual sponsors corporation. I don't know if staff could be a little more exact in their answer.

**Ms. Hope:** Yes, in fact there are a number of organizations of retirees. We're aware of four. The process in this amendment does provide for those organizations or any others that might emerge over time to be part of that rotation in appointing the retired member.

**Mr. Hardeman:** Thank you.

**Ms. Horwath:** I don't want to skip ahead, but if this motion passes, I'll probably end up withdrawing the next

one that I've got coming forward because it reduces the number that the government put in for the group that I was hoping to beef up their numbers for.

Having said that, though, I'm not going to support this particular motion, only because at this point in time I haven't had a chance to talk to the various stakeholders who are concerned about representation and structure and those kinds of things. I can be corrected if I'm wrong, but I think I've heard that there is a commitment by the government to make sure that this wildly—widely—widely or wildly; one or the other—amended bill will go back to committee hearings after second reading. I don't know whether the parliamentary assistant is in a position to give us that assurance, but certainly it's an extremely important piece of legislation. It has had much work over this process of clause-by-clause hearings, and I think that it's only appropriate that that does occur. So at this point in time, I'm not going to be supporting the government amendment because I think we need to have a full discussion with stakeholders about that structure, again, in future hearings.

**The Chair:** Any further debate? All those in favour of amendment 67? All those opposed? That's carried.

I'm going to go back to amendment 65, which we just stood down, and section 38.

**Mr. Duguid:** Do you want me to move it again?

**The Chair:** I believe you moved it, and I think it has been read into the record. Is there any debate on amendment 65? All those in favour of the motion? All those opposed? That's carried.

We'll go back to section 38. Shall section 38, as amended, carry? All those in favour? All those opposed? That's carried.

Going back to section 26, which is motions 39 and 39a: Those were read into the record but were stood down. Any debate on that issue?

**Mr. Hudak:** Would you or staff kindly remind me of what we're returning to?

*Interjection.*

**The Chair:** OK. I'm told that 39 wasn't read into the record, so can we get 39 read into the record?

**Mr. Duguid:** Is it 39a that we're talking about?

**The Clerk of the Committee:** No, page 39.

**Mr. Duguid:** I move that subsection 26(1) of the bill be amended by striking out "excluding non-voting members." Is that the one?

**The Chair:** Yes, that's the one. Any debate? All those in favour of the amendment? All those opposed? That's carried.

We cannot vote on that section yet. We have to go back to amendment 68.

**Ms. Horwath:** Madam Chair, I am going to withdraw this particular amendment.

**The Chair:** I believe, actually, that 68 is out of order, now that 67 would be. You were right.

**Ms. Horwath:** That's right.

**The Chair:** So I'm going to rule 68 is out of order. You say you'd withdraw that?



**Ms. Horwath:** Well, if it's out of order, it's out of order. I think there was already a motion that the government carried in regard to the structure they want to see. This, then, just reverses that.

**The Chair:** I believe that if you're going to withdraw, you need to withdraw 68, 69, 70, 71, 72—

**Ms. Horwath:** Can I ask for clarification, then, Madam Chair? Are they out of order or are they not? Because if they're not out of order, I won't withdraw them—or I won't necessarily withdraw all of them. I just need to add clarification. Are they out of order or are they not out of order?

**The Chair:** I'll let the clerk answer that question.

**The Clerk of the Committee:** Because we carried the motion on page 67, they're now out of order, because these motions are to the bill, and we've changed the bill.

**Ms. Horwath:** Procedurally, then, is it required that I withdraw them, or are they just ruled out of order?

**The Clerk of the Committee:** You can withdraw them and then we just don't deal with them. It's up to you. The Chair can rule them out of order or you can just withdraw them and we don't actually mention them.

**Ms. Horwath:** It seems to me that if they're out of order, they're out of order, so if that's the procedural method, I think that would be the preferred one.

**The Chair:** OK. I'm going to rule them out of order. Mr. Hardeman, did you want to ask a question? No. OK. I'm going to rule them out of order.

We're going to deal with section 39, as amended.

All those in favour? All those—Mr. Hudak, are you voting, or are you asking a question?

**Mr. Hudak:** No, I thought there was debate.

**The Chair:** No. We're voting on the section, because you've already debated all the other parts of this bill. Would you like to put something on the record?

**Mr. Hudak:** Yes. I'm dwelling on the new structure that the amendment brought forward. Like I said, hopefully we'll have a chance at second reading to discuss it further. The government has made a decision here in the amendment to give special recognition to the city of Toronto as an employer group. Again, there's not a matching employee group representation for the city of Toronto workers. If the decision is made that Toronto has such capacity that it should have its own seat at the board, there's not similarly capacity for Toronto's police or fire to be at the board. So I'm not sure of the consistency of the argument. If the argument is also made that Toronto is outside of AMO and therefore should have seats, does that give an incentive for other municipalities to similarly exit AMO to have seats on the OMERS board? Or if it's done because Toronto has such a large population and has such a large impact on the OMERS plan, I'd be curious what Mayor McCallion in Mississauga or Mayor Chiarelli in Ottawa, for example, would have to say about their own communities and their proportional impact on the OMERS plan.

At any rate, I think that stresses the importance, now that this has been altered substantially, of allowing second-reading hearings to hear from these groups about

proposed changes on the sponsors corp, because it may very well be instructive as to where the sponsors corp goes on a permanent basis as well. I won't belabour the point, but it's just another thing that jumped out at me in terms of the change in the structure.

**The Chair:** Shall section 39, as amended, carry? All those in favour? All those opposed? That's carried.

Section 40, amendment 73a, Mr. Duguid.

**Mr. Duguid:** I move that subsection 40(1) of the bill be amended by striking out "six persons" and substituting "eight persons." This is really a typo more than anything else.

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's carried.

Ms. Horwath, amendment 74.

1720

**Ms. Horwath:** I move that subsection 39(9) of the bill be struck out and the following substituted—am I on the right one?

**The Chair:** On 74?

**Ms. Horwath:** What happened to 73? Oh, that's section 39. Sorry.

I move that paragraph 1 of subsection 40(2) of the bill be struck out and the following substituted:

"1. One person is to be representative of the Association of Municipalities of Ontario."

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's lost.

Is somebody reading the government—Mr. Rinaldi?

**Mr. Lou Rinaldi (Northumberland):** I move that subsection 40(2) of the bill be amended by adding the following paragraphs:

"1.1 One person is to be representative of the city of Toronto.

"6. One person is to be representative of members of the OMERS pension plans who are paramedics represented for collective bargaining purposes by the Canadian Union of Public Employees (Ontario) or the Ontario Public Service Employees Union."

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's carried.

Ms. Horwath, I rule that amendment 76 is out of order, as 75 carried.

Shall section 40, as amended, carry? All those in favour? All those opposed? That's carried.

Subsection 41, Mr. Rinaldi.

**Mr. Rinaldi:** Subsection 41(2), paragraph 2: I move that paragraph 2 of subsection—

**The Chair:** Mr. Rinaldi, sorry. We're at 76a, I think. Do you have that motion?

**Mr. Rinaldi:** Yes, I have it. I'm sorry.

I move that subsection 41(1) of the bill be amended by striking out "10 persons" and substituting "12 persons."

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's carried.

Mr. Rinaldi, number 77.

**Mr. Rinaldi:** I move that paragraph 2 of subsection 41(2) of the bill be struck out and the following substituted:

"2. One person is to be representative of the city of Toronto.

"2.1 Two persons are to be representative of employers other than the city of Toronto and employers who are members of the Association of Municipalities of Ontario."

**The Chair:** Any debate?

**Mr. Hudak:** Just so I understand 2.1, two persons are to be representative of employers other than the city of Toronto, but they must be members of AMO?

**Interjection:** Yes.

**Mr. Hudak:** So neither. OK. That's clear. I just wanted to make sure I read it the proper way.

**Mr. Hardeman:** I'm just wondering, if one municipality decided this year that, for whatever reason, they just didn't join AMO, then they could have an appointee on the board?

**Ms. Hope:** They would in that case be an employer that is not represented by either AMO or the city of Toronto, so they would be in that large group of employers from whom two representatives could be drawn. So they wouldn't necessarily, as of right, have a spot, but they'd be amongst the employers who would form the pool.

**Mr. Hardeman:** How would that person be picked?

**Ms. Hope:** That matter would be up to the sponsors corporation. A process is not detailed in the bill.

**The Chair:** Any further debate? All those in favour of the amendment? All those opposed? That's carried.

Mr. Lalonde, page 78.

**Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell):** I move that subsection 41(2) of the bill be amended by adding the following paragraph:

"5. One person is to be representative of members of the OMERS pension plans who are not represented for collective bargaining purposes by the Canadian Union of Public Employees (Ontario) and not employed in the police and fire sectors."

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's carried.

Shall section 41, as amended, carry? All those in favour? All those opposed? That's carried.

Section 41.1, Ms. Matthews.

**Ms. Deborah Matthews (London North Centre):** I move that the bill be amended by adding the following section:

"Consolidation of terms and conditions of primary pension plan

"41.1(1) Within 12 months after section 32 comes into force, the administration corporation may prepare a consolidation of the terms and conditions of the primary pension plan and of any related retirement compensation arrangements that provide benefits to members and former members of the primary pension plan and may, for the purpose of preparing the consolidation,

"(a) make such amendments to the terms and conditions of the primary pension plan and related retirement compensation arrangements as may be necessary to ensure that the terms and conditions are in accordance with the provisions of this act; and

"(b) incorporate definitions that were in the Ontario Municipal Employees Retirement System Act before that act was repealed.

"Same

"(2) Despite clause (1)(a), an amendment shall be made by the administration corporation only if and to the extent that the amendment is necessary for the administration under this act of the primary pension plan, the pension fund for that plan or the retirement compensation arrangements."

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's carried.

Section 42, Mr. Dhillon.

**Mr. Vic Dhillon (Brampton West-Mississauga):** I move that subsection 42(5) of the bill be amended by striking out "voting members" and substituting "members."

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's carried.

Ms. Horwath, the next one, 81.

**Ms. Horwath:** I move that subsection 42(6) of the bill be amended by striking out "chair of the sponsors corporation" and substituting "the co-chairs of the sponsors corporation."

**The Chair:** I understand that that motion is now out of order. I rule it out of order.

Shall section 42, as amended, carry? All those in favour? All those opposed? That's carried.

Section 43, Ms. Horwath.

**Ms. Horwath:** I move that subsection 43(1) of the bill be struck out.

**The Chair:** Any debate? All those in favour? All those opposed? That's lost.

Ms. Horwath.

**Ms. Horwath:** I move that subsection 43(5) be struck out and the following substituted:

"(5) At any meeting before the 30-day period expires, the sponsors corporation"—

**The Chair:** I apologize, Ms. Horwath. I'm out of order, because I'm not looking at the numbers. I'm going to get to you. It's 82a, which is a government motion. Who is going to read this motion? Mr. Rinaldi.

**Mr. Rinaldi:** I move that paragraphs 2 and 3 of subsection 43(5) of the bill be struck out and the following substituted:

"2. If the sponsors corporation does not appoint the mediator or determine the method of choosing the mediator, the chair of the sponsors corporation"—

**The Chair:** Mr. Rinaldi, are you on 82a? It's not looking familiar.

**Mr. Rinaldi:** OK, we've got 82a. Thank you, Madam Chair.

I move that subsections 43(3) and (4) of the bill be struck out and the following substituted:

"Mediation

"(3) The sponsors corporation may use mediation to help its members make a decision about a specified change to an OMERS pension plan if all of the following circumstances exist:



"1. A meeting of the sponsors corporation is called under section 42 for the purpose of considering a specified change.

"2. At the meeting, a member of the sponsors corporation makes a proposal in writing for a specified change or for no change.

"3. The sponsors corporation does not, within 30 days after the meeting at which the proposal is first considered, decide by an affirmative vote of two-thirds of its members to accept the proposal, with or without amendments, or decide by an affirmative vote of a majority of its members to reject it.

"Referral for mediation

"(4) If a proposal is neither accepted, with or without amendments, nor rejected within the 30-day period in accordance with subsection (3), the sponsors corporation may, by an affirmative vote of a majority of its members, refer the proposal for mediation."

1730

**The Chair:** Any debate?

**Mr. Hardeman:** If I might just ask the government side, is this the amendment that deals with the two-thirds vote and the majority vote, and the people in between are causing a problem, shall we say?

**Mr. Duguid:** Yes, it's for the transitional process period.

**Mr. Hardeman:** If I could just get it clear in my mind: If a proposal is to change the plan, it must have the support of two thirds in order to pass?

**Mr. Duguid:** Correct. If it's a—what's the word?—specified change—

**Mr. Hardeman:** Yes, if it's one of the specified items that comes forward, then I have no problem with that. But it requires two thirds to pass it, so if it doesn't get two thirds, it doesn't fail if it has more than 50%. So between the 50% vote and the two thirds, it would go to a mediator or an arbitrator, is that right?

**Mr. Duguid:** It could go to a mediator if the sponsors corporation, on a majority vote, decided to send it there—not automatically.

**Mr. Hardeman:** A simple majority would just send it to a mediator.

**Mr. Duguid:** Correct.

**Mr. Hudak:** As my colleague and I have said, we have some concern about how that is going to operate when the vote is not a vote. It's sort of the hanging chad approach: Is it a vote yea or nay, and where will it go from there? So again, I think it's another reason for this bill to go to second-reading hearings: to see how the groups that would be involved with the OMERS pension plan going forward feel about having this sort of hanging chad approach to the issue.

With respect to Mr. Rinaldi's motion, it effectively changes things in the first couple of sentences from mandatory mediation to mediation, and it's permissive, changing "shall" to "may." Did I follow it correctly?

**The Chair:** A question to staff?

**Mr. Hudak:** If I could, yes. I was listening to Mr. Rinaldi's motion and I didn't have it in front of me at the

time, but I thought he was changing subsection 43(3) to read, "The sponsors corporation may use mediation to help its members," so it has become permissive as opposed to directive. They don't have to use mediation if they don't want to.

**Ms. Hope:** Correct.

**Mr. Hardeman:** I just wanted to point out that I believe that a straight two-thirds vote, with the change that we put forward in our motion that it would only be for specified situations, would be clearer and easier to administer, and, I think, in a fairer manner than this proposal. As was mentioned before, obviously this is first reading, and hopefully we'll hear more about the impact of what's being proposed here, and hopefully we can address it again between second and third reading of the bill.

**The Chair:** Any further debate? We have amendment 82a before us. All those in favour? All those opposed? That's carried.

Returning to you, Ms. Horwath, amendment 83.

**Ms. Horwath:** I move that subsection 43(5) be struck out and the following substituted:

"(5) At any meeting before the 30-day period expires, the sponsors corporation may appoint the mediator from an agreed list of mediators or may determine the method for choosing the mediator."

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's lost.

Amendment 84, Mr. Lalonde.

**Mr. Lalonde:** I move that paragraphs 2 and 3 of subsection 43(5) of the bill be struck out and the following substituted:

"2. If the sponsors corporation does not appoint the mediator or determine the method for choosing the mediator, the chair of the sponsors corporation shall choose the mediator in accordance with subsection (6) and make the appointment on behalf of the sponsors corporation."

"3. If the sponsors corporation determines the method for choosing the mediator but no mediator is appointed within 30 days after the meeting at which the determination was made, the chair of the sponsors corporation shall choose the mediator in accordance with subsection (6) and make the appointment on behalf of the sponsors corporation."

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's carried.

Ms. Horwath, amendment 85.

**Ms. Horwath:** I move that subsection 43(6) of the bill be struck out.

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's lost.

Number 86, Ms. Matthews.

**Ms. Matthews:** I move that subsection 43(6) of the bill be struck out and the following substituted:

"Selection by chair of sponsors corporation

"(6) If the chair of the sponsors corporation is required to choose the mediator, the following process applies:

"1. The chair shall prepare a list of five persons who are willing to act as mediator.

"2. He or she shall invite each member of the sponsors corporation to identify up to three of those persons as his or her preferred candidates for mediator, before the deadline specified by the chair.

"3. He or she shall choose as mediator one of the persons identified as a preferred candidate. If there are no preferred candidates identified before the deadline, he or she may choose any person that he or she considers suitable on the list."

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's carried.

I believe we now have to go back to 39a, which is in section 26, now that we've dealt with amendment 86. Mr. Duguid.

**Mr. Duguid:** I move that subsection 26(3) of the bill be struck out and the following substituted:

"Decision about a specified change

"(3) Despite subsection"—

**The Chair:** I'm sorry, Mr. Duguid. I've been given conflicting advice here. I have to go back to—

*Interjection.*

**The Chair:** We have to do 86a before we go back. Sorry. So 86a, which I believe is a government motion. Can you read 86a into the record?

**Mr. Duguid:** I move that subsections 43(11) and (12) of the bill be struck out and the following substituted:

"Decision by sponsors corporation

"(11) The sponsors corporation may decide by an affirmative vote of two thirds of its members to accept the proposal, with or without amendments, or may decide by an affirmative vote of a majority of its members to reject it.

"Arbitration upon request

"(12) If the sponsors corporation neither accepts, with or without amendments, nor rejects the mediator's report within 30 days after its first meeting after receiving the report, the sponsors corporation may, by an affirmative vote of a majority of its members, refer the matter for arbitration."

**The Chair:** Any debate? Seeing none, all those in favour of the amendment? All those opposed? That's carried.

OK, 39a, which has been read into the record. Any debate on 39a? Seeing none, all those in favour of 39a? All those opposed? That's carried.

Shall section 26, as amended, carry?

**Mr. Hudak:** On section 26 again, we did stand that down the other day, right?

**The Chair:** Yes.

**Mr. Hudak:** I appreciate the parliamentary assistant's indulgence in that. I just wanted to again express my concerns, as a member of the committee, with, as I've nicknamed it, the hanging chad mechanism: When is a lost vote truly lost and when does it survive for another day? I do think that Mr. Hardeman's approach of a much more clear mechanism is preferable to the one that's put forward in the amended bill before us.

1740

**The Chair:** Shall section 26, as amended, carry? All those in favour? All those opposed? That's carried.

Returning to section 43, Ms. Horwath, amendment 87.

**Ms. Horwath:** I move that paragraphs 2 and 3 of subsection 43(14) of the bill be amended by striking out "the chair of the sponsors corporation" wherever it appears and substituting in each case "the co-chairs of the sponsors corporation."

**The Chair:** I understand that this motion is now out of order, so I'm going to rule it out of order.

Shall section 43, as amended, carry? All those in favour? All those opposed? That's carried.

Section 44, Ms. Horwath.

**Ms. Horwath:** I move that subsection 44(1) of the bill be amended by adding the following paragraph:

"1.1 The voting members of the sponsors corporation who are chosen by entities that represent employees shall appoint the other co-chair."

**The Chair:** I'm just getting legal counsel as to whether this is out of order. It's ruled out of order.

Government motion 89, Mr. Lalonde.

**Mr. Lalonde:** I move that subsection 44(2) of the bill be struck out and the following substituted:

"Term of office

"(2) The term of office of a member appointed under subsection (1) expires immediately before the first anniversary of the day on which subsection 32(1) comes into force or when the sponsors corporation passes a bylaw under subsection 33(1), whichever is earlier."

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's carried.

Shall section 44, as amended, carry? All those in favour? All those opposed? That's carried.

Section 45, Ms. Horwath.

**Ms. Horwath:** I move that subsection 45(1) of the bill be amended by striking out "and after the first anniversary of."

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's lost.

Ms. Matthews.

**Ms. Matthews:** I move that subsection 45(1) of the bill be amended by striking out the portion before paragraph 1 and substituting the following:

"Subsequent composition of the administration corporation

"45(1) If the sponsors corporation has not passed a bylaw under subsection 33(1) on or before the first anniversary of the day that subsection 32(1) comes into force, the composition of the administration corporation for the period commencing on that first anniversary and ending when the sponsors corporation passes a bylaw under subsection 33(1) is composed of the following persons, to be chosen in the manner indicated."

**The Chair:** Any debate? All those in favour of the amendment? All those opposed? That's carried.

The next amendment is 92, Mr. Duguid.

**Mr. Duguid:** I move that subsection 45(1) of the bill be amended by adding the following paragraph:



"1.1 Two persons to be chosen by the city of Toronto."

**The Chair:** Any discussion?

**Mr. Hudak:** I'm just trying to anticipate what this will look like, the administration corp's composition, if all of the government motions were to pass.

**Ms. Hope:** The administration corporation would increase in members by four: two each on the employer and employee side. The two additional employer representatives will be for the city of Toronto and the two additional employee representatives would be one to CUPE and one to unaffiliated management employees.

**The Chair:** Any further debate?

**Mr. Hudak:** Again, just to express concern with this approach, as there's a bit of an imbalance: We'll have two from the city of Toronto, and while there are two employee groups, they won't necessarily represent the employees of Toronto. They very well may, but they very well may not. I understand that it's a difficult issue for the government to solve, given that's what Toronto asked for, but I do think it would be important for us to hear from the constituent groups of OMERS what they think of the new structure on the very important administration corporation.

**The Chair:** Any further comments or questions? All those in favour of the amendment? All those opposed? That's carried.

Ms. Horwath.

**Ms. Horwath:** I move that paragraph 5 of subsection 45(1) of the bill be amended by striking out "two" and substituting "three."

**The Chair:** Any discussion on the amendment? All those in favour? All those opposed? That's carried.

Amendment 94: who's reading that? Mr. Duguid.

**Mr. Duguid:** It's the same motion in—

**The Chair:** So you withdraw it?

**Mr. Duguid:** We'll withdraw it.

**The Chair:** Number 94 is withdrawn. Number 95.

**Mr. Dhillon:** I move that subsection 45(1) of the bill be amended by adding the following paragraph:

"7.1 One person to be chosen by the Association of Municipal Managers, Clerks and Treasurers of Ontario."

**The Chair:** Any discussion? All those in favour of the amendment? All those opposed? That's carried.

Ms. Horwath.

**Ms. Horwath:** I move that paragraph 8 of subsection 45(1) of the bill be amended by striking out "two persons" and substituting "one person."

**The Chair:** Any discussion? All those in favour of the amendment? All those opposed? That's lost.

Ms. Horwath, number 97.

**Ms. Horwath:** I move that subsection 45(3) of the bill be struck out and the following substituted:

"Representatives of other participating employers

"(3) The two persons referred to in paragraph 4 of subsection (1) are to be chosen by the persons selected under paragraphs 1 and 3 of subsection (1) from among persons with director or management responsibilities with an employer, other than an employer that is a mem-

ber of the organizations referred to in paragraphs 1 to 3 of subsection (1), after consultations with those employers."

**The Chair:** Any discussion? All those in favour of the amendment? All those opposed? That's lost.

Ms. Horwath, number 98.

**Ms. Horwath:** I move that subsection 45(4) of the bill be struck out and the following substituted:

"Representative of other members

"(4) The two persons referred to in paragraph 8 of subsection (1) are to be chosen by the persons selected under paragraphs 5 to 7 of subsection (1) from among persons who are elected to, employed by or are members of a trade union or employee organization representing OMERS members, other than the trade unions and employee organizations described in paragraphs 5 to 7 of subsection (1), after consultations with those trade unions and employee organizations.

**The Chair:** Any discussion? All those in favour of the amendment? All those opposed? That's lost.

Government motion 99. Mr. Duguid, are you doing that one?

**Mr. Duguid:** I move that paragraph 1 of subsection 45(4) of the bill be amended by striking out "Only those organizations that are corporations are eligible to participate in the process described in this subsection."

**The Chair:** Any discussion on this amendment? All those in favour of the amendment? All those opposed? That's carried.

Ms. Horwath, amendment 100.

**Ms. Horwath:** I move that subsection 45(5) of the bill be struck out and the following substituted:

"(5) The person referred to in paragraph 9 of subsection (1) is to be chosen by the persons selected under paragraphs 5 to 7 of subsection (1) from among former members of OMERS."

**The Chair:** All those in favour of the amendment? All those opposed? That's lost.

Mr. Rinaldi.

**Mr. Rinaldi:** I move that paragraph 1 of subsection 45(5) of the bill be amended by striking out "Only those organizations that are corporations are eligible to participate in the process described in this subsection."

**The Chair:** Any discussion? All those in favour of the amendment? All those opposed? That's carried.

Ms. Horwath, amendment 102.

**Ms. Horwath:** I move that subsection 45(8) of the bill be struck out and the following substituted:

"Co-chairs

"(8) The members of the administration corporation shall appoint two members as co-chairs in the following manner:

"1. The members of the administration corporation who represent members or former members of the OMERS pension plans or who are chosen by entities that represent members or former members of the OMERS pension plans shall appoint one co-chair.

"2. The remaining members of the administration corporation shall appoint the second co-chair."



1750

**The Chair:** Any discussion? All those in favour of the amendment? All those opposed? That's lost.

Shall section 45, as amended, carry? All those in favour? All those opposed? That's carried.

Section 45.1, Ms. Horwath.

**Ms. Horwath:** I move that the bill be amended by adding the following section:

"Decision-making mechanisms

"45.1(1) Any resolutions of the administration corporation shall require a vote of the majority of the members present, provided that at least one member appointed by the organizations that represent employers and one member appointed by the organizations that represent employees have supported the resolutions.

"(2) A deadlock shall be deemed to exist where a proposal, motion or resolution made by the administration corporation is neither adopted nor rejected by a majority vote, or where a resolution or motion is unable to be made at a meeting due to lack of quorum at two consecutive meetings.

"(3) In the event of a deadlock, a further meeting of the administration corporation shall be held no later than 10 days after the deadlock has arisen for the purpose of resolving the matter in dispute.

"(4) If the matter is not resolved at the meeting described in subsection (3), any five members of the administration corporation may require the naming of a 17th member of the administration corporation, who shall cast the deciding vote at the next scheduled or special meeting.

"(5) The 17th member of the administration corporation shall be one of five persons selected by the sponsors corporation from time to time who shall rotate in order between them as determined by the sponsors corporation, except that if any one of them is unavailable within 30 days of the dispute arising to resolve the matter in dispute, the 17th member of the administration corporation shall pass to the next person or to such other person as may be agreed by the sponsors corporation.

"(6) If the sponsors corporation cannot agree on a 17th member of the administration corporation, he or she shall be appointed by the Chief Justice of Ontario.

"(7) The 17th member of the administration corporation shall cast a tie-breaking vote and shall make his or her determination within seven days of the meeting at which submissions are made.

"(8) The decision of the 17th member of the administration corporation shall be final and binding on all other members of the administration corporation, the sponsors corporation, employers, employees and beneficiaries.

"(9) Upon rendering his or her decision, the 17th member of the administration corporation shall cease to be a member of the administration corporation.

"(10) The reasonable expenses of the 17th member of the administration corporation shall be paid out of the pension fund."

**The Chair:** Any discussion? All those in favour of the amendment? All those opposed? That's lost.

Government motion, Ms. Matthews.

**Ms. Matthews:** I move that the bill be amended by adding the following section:

"Transitional amendments to OMERS pension plans

"45.1(1) The Lieutenant Governor in Council may make regulations governing the establishment and terms and conditions of supplemental plans for the purposes of section 4, including,

"(a) prescribing the manner for calculating or the assumptions to be used in calculating the amount of pension benefits provided under the supplemental plans;

"(b) prescribing the requirements to be satisfied for persons to be eligible to be members of the supplemental plans;

"(c) establishing the rate or amount of contributions to be made under the supplemental plans or prescribing the manner for determining the rate or amount of contributions.

"Repeal

"(2) This section is repealed on the third anniversary of the day this section comes into force.

"Revocation of regulation

"(3) Any regulation made under this section is revoked on the day this section is repealed."

**The Chair:** Any discussion?

**Mr. Hudak:** I think this is the last of the amendments before us for this bill, and I do want to note for the record that we seem to be having some problems with our TV reception of what's happening in the assembly. I also wanted to note that it's remarkable that Deb Deller has an identical twin of similar taste and clothing who is appearing at the same time in two places in the Legislature. That's all I have to say.

**The Chair:** Any discussion about the amendment?

**Mr. Duguid:** In case this is the last time we meet this year, I just want to thank the clerk for sorting us through this. There were a lot of amendments, and it was a pretty difficult job for the clerk. So, thanks to the clerk and her staff for getting us through this.

**The Chair:** Yes, Tonia is a star. She helps me get through this.

All those in favour of the amendment? All those opposed? That's carried.

OK, we can go from sections 46 to 58. Shall sections 46 to 58 be carried? All those in favour? All those opposed? That's carried.

Shall the title of the bill carry? All those in favour? All those opposed? That's carried.

Shall Bill 206, as amended, carry? All those in favour? All those opposed? That's carried.

Shall I report the bill, as amended, to the House? All those in favour? All those opposed? That's carried.

This concludes the committee's consideration of Bill 206. I'd like to thank all my colleagues on the committee for their work on the bill. The Chair also thanks the committee, the ministry staff and the members of the public who have contributed to making this work.

This committee now stands adjourned until the call of the Chair.

*The committee adjourned at 1755.*











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Ms. Janet Hope, director, municipal finance branch,

Mr. Tom Melville, legal counsel,

Ministry of Municipal Affairs and Housing

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Ms. Tonia Grannum

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Ms. Catherine Macnaughton, legislative counsel





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## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 14 December 2005

# Journal des débats (Hansard)

Mercredi 14 décembre 2005

Standing committee on  
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Organization

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES**

Wednesday 14 December 2005

Mercredi 14 décembre 2005

*The committee met at 1552 in room 151.*

**APPOINTMENT OF SUBCOMMITTEE**

**The Vice-Chair (Mr. Vic Dhillon):** The standing committee on general government is called to order. We're here today just for an organization meeting. We have a motion to appoint the subcommittee on committee business. I believe Mr. Lalonde has a motion.

**Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell):** I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof,

to consider and report to the committee on the business of the committee; that the subcommittee be composed of the following members: the Chair as Chair, Mr. Rinaldi, Mr. Ouellette and Ms. Horwath; and that the presence of all members of the subcommittee is necessary to constitute a meeting.

**The Vice-Chair:** All in favour? Carried. That's all for committee business.

Just a reminder, we have some subcommittee business to take care of. So I'd ask all the subcommittee members to please stay behind.

*The committee adjourned at 1553.*

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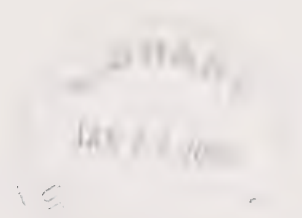
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Monday 16 January 2006

# Journal des débats (Hansard)

Lundi 16 janvier 2006

**Standing committee on  
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STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Monday 16 January 2006

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EN CE QUI CONCERNE  
DES QUESTIONS FAMILIALES

Consideration of Bill 27, An Act to amend the Arbitration Act, 1991, the Child and Family Services Act and the Family Law Act in connection with family arbitration and related matters, and to amend the Children's Law Reform Act in connection with the matters to be considered by the court in dealing with applications for custody and access / Projet de loi 27, Loi modifiant la Loi de 1991 sur l'arbitrage, la Loi sur les services à l'enfance et à la famille et la Loi sur le droit de la famille en ce qui concerne l'arbitrage familial et des questions connexes et modifiant la Loi portant réforme du droit de l'enfance en ce qui concerne les questions que doit prendre en considération le tribunal qui traite des requêtes en vue d'obtenir la garde et le droit de visite.

**The Chair (Mrs. Linda Jeffrey):** Good morning. The standing committee on general government is called to order. We're here today to commence public hearings on Bill 27, the Family Statute Law Amendment Act. Committee, I bring to your attention that we have a summary of recommendations, which were produced by Mr. Kaye, in front of you. Should you require any additional research information, you might want to let the researcher know as soon as possible. We have a very short timeline, so if you require additional information, you'd need to let him know quickly.

I understand, Mr. Zimmer, you have something to add to this morning with regard to clause-by-clause consideration of the bill.

**Mr. David Zimmer (Willowdale):** Yes. There is an issue about the deadline for final submissions of any proposed amendments. I'm going to ask my colleague Deb Matthews to speak to it.

**Ms. Deborah Matthews (London North Centre):** The deadline for submissions is tomorrow after clause-by-clause has already begun, so obviously that's inappropriate. My suggestion is that we delay clause-by-clause until Wednesday morning, that we leave the deadline where it is, allow people to make submissions

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Lundi 16 janvier 2006

and then meet for clause-by-clause Wednesday morning, which means we'd finish up quite early on Tuesday.

**The Chair:** Any further discussion? Is everybody okay with that?

**Mr. Peter Kormos (Niagara Centre):** Our job is to serve. As long as it's okay with Mr. Zimmer, as long as it gets his seal of approval, I'm onside.

**The Chair:** Thank you, Mr. Kormos.

**Mr. Zimmer:** It has my seal of approval.

**The Chair:** So the agreement is that we will begin clause-by-clause on Wednesday morning, as we were originally scheduled to do. Is that right? Okay.

**Mr. Kormos:** That gives us all more time for campaigning.

**The Chair:** We have more time for other activities.

I'd like to welcome our witnesses.

*Interjections.*

**The Chair:** Committee, we have lots of people waiting to chat with us this morning.

I'd like to welcome our witnesses and tell you that you have 30 minutes to make your presentation. When you do come up to the microphone, if you could identify yourself and the organization that you're speaking for so that we can capture it for Hansard.

CANADIAN COUNCIL  
OF MUSLIM WOMEN

## NO RELIGIOUS ARBITRATION COALITION

**The Chair:** Our first delegation this morning is the Canadian Council of Muslim Women.

**Ms. Alia Hogben:** Good morning. Can you hear me?

**The Chair:** I can hear you well. If you could identify yourself, and when you do begin, I'll give you 30 minutes.

**Ms. Hogben:** My name is Alia Hogben. I'm representing the Canadian Council of Muslim Women and the No Religious Arbitration Coalition.

The No Religious Arbitration Coalition and the Canadian Council of Muslim Women commend and thank the Premier of Ontario for the decision to amend various acts so that no religious family laws can be used. We are grateful to the NDP for their courageous statement that arbitration and religious laws have no place in our civil laws, and we know that the Conservatives support the principle of one law being applied to all of us. Thank

you, and we hope that the bill, with the changes we are proposing, will be passed with all-party agreement.

The last two years have been extremely difficult for us as believing Muslim women. Some Muslims have felt that public attention has led to an increase in the ever-present anti-Muslim and anti-Islamic sentiment, and we know that it has divided the Muslim communities.

We regret that the decision to correct the Arbitration Act took so long, when all we had asked for was to be treated as equals under the law of Ontario regardless of ethnicity, race or religion. There would have been an uproar if anyone had advocated for differential treatment under the law of any racial minority women and their families, and yet the government took so long to acknowledge that religious women's equality rights under our laws must also be protected. It is a great relief, not only for us in Canada but for religious women all over the world, that the state has confirmed its recognition of women's full citizenship and equality before the law. We heard concerns from many countries that are watching closely as to what is happening in a western democratic country, a country which is known for its Charter of Rights and Freedoms.

CCMW has distinguished between sharia and Muslim family laws. For Muslims, sharia has a more profound meaning, while what is being discussed here is jurisprudence. Our plea to all of you today is that we not use the term "sharia," which upsets Muslims and focuses on them, and focus rather on the fact that the Premier is correctly eliminating the use of all religious law, not just Muslim laws.

We would like to recognize the strong coalition of organizations and individuals who have so actively supported us and have done so much of the advocacy work on the basis that this issue was not about Muslim women but about the erosion of women's equality rights. We submit to you our joint declaration and the list of signatories so that their achievements are recognized by the committee and recorded in the annals of the Legislature.

The No Religious Arbitration Coalition and CCMW support the amendments which will guarantee that family law arbitrations in Ontario will be conducted using only Canadian law. Most importantly, the bill ensures that other principles and laws will have no legal effect and will amount to advice only. These amendments meet the overall objective of our coalition in that they reinforce one law for all of us, and this law is open to changes through the democratic processes.

While the No Religious Arbitration Coalition and CCMW strongly support the bill, there are some concerns and we request that these be considered as part of the amendments; otherwise, we will have created other gaps and loopholes which will haunt us in the future.

Our recommendations are:

(1) It is vital that as this bill is creating change in the family law regime and arbitration is being strengthened, the bill include a clause requiring the government to monitor and evaluate the implementation of the law. We recommend that a full evaluation be done at the end of

three years that includes a review of the processes, outcomes and impacts on families, especially on women and their children. To do such an evaluation, it will require the immediate development of records and forms which are to be submitted by arbitrators to the Attorney General. We recommend that this start within a specified and a quick period of time. We further request that the government ensure that the expertise of women's organizations, such as our groups, be part of the monitoring and evaluation, with the support of the government to do so.

(2) We recommend that the requirement of record-keeping and reporting to the Ministry of the Attorney General be sufficiently detailed to ensure a thorough evaluation of the processes, outcomes and impacts on women. To implement this, we ask that the process start as soon as possible so that there is no delay in the submission of records and the start of the evaluation process.

(3) We recommend that the language of the amendments is not weakened in any way, so that the strong requirement for the use of the laws of Ontario is clearly stated and no new loopholes are created. We support the government's position that "there is one family law for all Ontarians and that is Canadian law, and that resolutions based on other laws and principles, including religious principles, would have no legal effect and would amount to advice only." Please ensure that this is safeguarded. We ask this because we have already heard that some religious leaders and bodies are persuading women and their families that they can continue using religious laws for arbitration.

(4) We are pleased that parties must have independent legal advice for arbitration. But currently legal aid does not apply in arbitration, which means that many women will not have the means to pay for legal advice. Therefore, we recommend that legal aid be made available for women in need, and that this be included in the bill.

(5) As there are substantive requirements in the regulations, we recommend that these not be delayed, and be implemented within a specified short time frame. This is extremely important, as the regulations contain requirements for arbitrators, such as being members of a dispute resolution organization, or training, and the requirement to submit records to the Attorney General.

(6) As this bill is revising critical acts and as we do not want any family arbitration to occur at this time, we recommend that the act be implemented within 120 days from royal assent.

(7) We know that the justice system has obstacles and challenges and that easy access is lacking for many women. Therefore, we recommend that the public system have resources, training of personnel and cultural and language interpreters built into its infrastructure so that all Canadian women can truly access their justice system.

(8) We have often heard that the Family Law Act of Ontario has problem areas and requires amendments. We ask the help of all the political parties to ensure that the legislation is reviewed as soon as possible and that the



review invoke organizations which have experience in working directly with women and their families.

Our submission includes the coalition's joint statement, the list of signatories of the declaration, the booklet *Behind Closed Doors*, which was developed by Rights and Democracy (International Centre for Human Rights and Democratic Development) and the information kit developed by the Canadian Council of Muslim Women.

Thank you for the opportunity to speak with you directly. We are exceedingly relieved that our equality rights have been reaffirmed. It has been a frightening journey to realize how tenuous these rights are and to face the possibility of losing some of them in Canada.

**The Chair:** Thank you for your delegation. You've left about seven minutes for each party, should they ask questions, beginning with Mr. Runciman.

**Mr. Robert W. Runciman (Leeds-Grenville):** Ms. Hogben, we appreciate your being here this morning, travelling all the way from eastern Ontario.

**Ms. Hogben:** Yes, as you did.

**Mr. Runciman:** As I did. I very much appreciate it.

I'm just curious with respect to the approach that Quebec has taken versus Ontario. Would you comment on that? Would you see a preference if the Ontario government had proceeded, or perhaps still could proceed, in a manner similar to Quebec's? Would that be a preference of your organization?

**Ms. Hogben:** We did look at Quebec. We liked their laws, which just say that the family is of far too great importance to have its matters dealt with outside the civil law system. We also realized—I don't know if that's what you are talking about—that there was a presentation to their Legislature by two MPPs, or MLAs as they call them, where they focused on sharia, or Muslim family law. We agreed with the sentiment but we didn't like the focus on us as Muslims because, again, it created a lot of animosity in Quebec.

**Mr. Runciman:** Setting aside the sentiment issues and the challenges they pose, is that a preferred route for you or do you see strong distinctions between what's happening here versus Quebec?

**Ms. Hogben:** Now, with the bill, I have a feeling that this will do what Quebec does, which is a separation. If the Premier's statement is clearly understood, that only Canadian law will apply, then I think it probably will be very similar to the Quebec situation.

**Mr. Runciman:** When Marion Boyd conducted her review, I'm assuming you were afforded an opportunity to participate in that.

**Ms. Hogben:** Yes.

**Mr. Runciman:** What kind of opportunity? Could you give us some indication?

**Ms. Hogben:** We met with her as an organization and then we brought in some Muslim women, particularly in Ottawa, who spoke to her as well. I think those were the two occasions.

**Mr. Runciman:** Obviously, you were concerned with the conclusions she reached.

**Ms. Hogben:** The thing about Marion Boyd's report was that, first of all, she didn't stick with the mandate, with the terms of reference. She only seemed to focus on Muslims. Secondly, we felt that the body of the report contained all the worries and concerns I've expressed to her, but she makes an incredible leap from the body of the report to her recommendations. The very first one caused us a huge amount of anger, depression or whatever, when she said that because she found no proof that religious arbitration created any problems, therefore she recommended that it continue.

1020

The fact remains that she couldn't find any proof of it because no records were kept, and everyone who spoke to her told her there were problems in it. She ignored that completely, and when we tried to talk to her—I spoke at various sessions, at public meetings with Marion Boyd—it seemed to us that she ended up saying she was a religious woman and that she saw this as religious freedom, as opposed to women's equality or rights.

She made a number of comments, at public meetings, such as, "Well, you know, the public system is so poor; why shouldn't women or families go to an alternative?" Our response to that is that that's discriminatory.

**Mr. Runciman:** Right. You talked about anti-Muslim sentiment. I just wish you'd take a second—in terms of the public release of the Boyd report versus the time lag with the ultimate decision being taken by the Premier, apparently, did you sense or taste or feel that sort of growing sentiment as a result of that delay in making a decision?

**Ms. Hogben:** Yes, we did. We just felt that it has dragged on. I don't know if it was a more increased—some Muslims feel that there was an increase. I think for us it was far more that it was so focused on Islam and Muslims as opposed to the fact that we were saying, "No religious laws," and we meant no religious law for any group, whether they were Hindus, Muslims, Jews or Christians. I think it was the focus on Muslims that was negative.

The other part of it, which is more tragic for us, is that it has also divided the Muslim communities.

**Mr. Runciman:** I'm not attempting to drag you into a political debate, although it's hard for me not to, being political myself in this role. Certainly one of the criticisms I had with respect to letting the various groups twist in the wind with respect to this issue was the concerns that your organization had, and continues to have, with what was suggested here: the fact that it did take so long, and the fact that your organization and other Muslim women have to live with the end results of any decisions taken here. It seemed to me that Ms. Boyd, and subsequently the government's inability to make a decision for some period of time, were fuelling this anti-Muslim sentiment.

Ultimately what seemed, from my seat, to sway the government into making a decision was advertising and pressure from non-Muslim women: June Callwood, Margaret Atwood and others. It strikes me that the people



who are being impacted were left on the sidelines and it became more of a politically dicey issue for the government. That's why they responded, and not for the reasons which you've outlined, which are the right reasons to respond.

Have you taken a look at some of the implications of amendments that you're suggesting? I know this is difficult for you. I guess it's difficult, when you talk about legal aid—the record-keeping. There are, obviously, financial and manpower implications, but that's the sort of thing I don't imagine your organization has the resources to really assess.

**Ms. Hogben:** No. We don't—

**The Chair:** Just so you know, you have about a minute left, so you'd have a minute to answer that question.

**Ms. Hogben:** Okay.

Firstly, I just want to say that we, as a small organization of Muslim women, did like and wanted and have been very pleased with the support we got from all Canadian women. They lifted it away from focusing just on Muslims, because that was our concern. So when 100 or so organizations supported us—women, labour and individuals—we were very pleased, because that's exactly what we were saying. I think that that for us was a strength, not a weakness.

**Mr. Runciman:** No. I appreciate that.

**Ms. Hogben:** Secondly, about the finances, we're hoping very much that you will support us, Mr. Runciman. If this is going to go through, there has to be legal aid and something has to be done about the public system. We can't continue to say that the public system is bad, that there are backlogs and all the rest of it—it's not accessible, particularly to women who may not speak English as well, or whatever else—and then say, "Go somewhere else." That's just not moral, ethical, or correct legally.

**Mr. Runciman:** Thanks very much.

**Mr. Kormos:** Thank you kindly for your participation. I'm pleased about your last comment. I gesture to Mr. Zimmer because I know he's supportive.

One of the problems, as you know, is that even when people—and it's often women—get a legal aid certificate, the cap on the hours that is allowed a family lawyer is so low that lawyers won't accept the certificates. They don't do it out of malice; they simply can't sustain their practices and do justice to that client with the unconscionably and just totally nonsensical cap on the number of hours to devote to a legal aid client. That's across the province; I'm convinced of that. And as you point out very validly, it's going to impact on the purported access by a party to arbitration under this legislation to get independent legal advice.

You've hit the nail on the head, so I appreciate you saying that and I appreciate Mr. Zimmer's body language in response to it, which seemed very supportive of the proposition of adequate funding of legal aid. Thank you, ma'am.

**Ms. Hogben:** Shall I answer you?

**Mr. Kormos:** No. I yield the floor to Mr. Zimmer. I'm sure he wants to—

**Ms. Hogben:** So you're supporting us? That's great. That's all I need to hear.

**The Chair:** Can I ask that we go through the Chair? Do you have any further comments or questions?

**Mr. Kormos:** No, thank you.

**The Chair:** Okay. And from the government side?

**Ms. Matthews:** Thank you very much. It's a real pleasure to have you with us today. I do want to say thank you for your leadership on this issue over the past too long period of time. The final result is one that we're very happy with.

I want to ask you a little bit about your recommendation on evaluation. I wonder if you can just expand a bit on what you'd like to see measured. What outcomes would you want to see evaluated?

**Ms. Hogben:** I think we wanted the whole process to be evaluated, so I think what will be important is the setting up of the evaluation. This is why we are suggesting—not just our group; there are a lot of other women's groups out there that have had experience working directly with women and their children, and there are laws and so on. So to sit down—and the instrument or the tool or the format that should be used and have the information on it could be based on reality: What happens to families and women who go to arbitration? Is domestic violence taken into consideration? Are the decisions made in as appropriate a manner as possible?

It would still allow a lot of people—men and women—to become arbitrators. We want to make sure that their training, their processes, the way they conduct it are fair and equitable and that they are using the equality principle in it as much as possible. I think it's the whole process that we would be delighted to help set up. It's not just our group, but a lot of other groups that are working directly with women and children.

**Ms. Matthews:** Thank you very much. I will happily pass this on to any other members who have questions.

**The Chair:** Mr. Zimmer?

**Mr. Zimmer:** No, that's fine.

**The Chair:** Okay.

Thank you very much for your delegation. We appreciate your being here today.

**Ms. Hogben:** Thank you very much.

# METROPOLITAN ACTION COMMITTEE ON VIOLENCE AGAINST WOMEN AND CHILDREN YWCA TORONTO

**The Chair:** Our next delegation is the Metropolitan Action Committee on Violence Against Women and Children. Good morning. When you get yourself settled, are you both going to be speaking this morning?

**Ms. Pamela Cross:** We are.

**Ms. Amanda Dale:** It's actually a joint presentation with YWCA Toronto and METRAC.



**The Chair:** Okay. As you begin, if you could introduce yourselves and the organization you speak for. When you do begin, you'll have 30 minutes. If you leave time at the end, we'll be able to ask you questions.

**Ms. Cross:** Thank you. Good morning. My name is Pamela Cross. I'm the legal director with the Metropolitan Action Committee on Violence Against Women and Children, known in short as METRAC.

**Ms. Dale:** I'm Amanda Dale, the director of advocacy and communications with YWCA Toronto.

1030

**Ms. Cross:** We're here this morning to speak in favour of Bill 27, with some detailed concerns as the bill moves forward.

To set our comments in context, METRAC is a Toronto-based organization working for the eradication of all forms of violence against women and children. The mandate of our justice program includes law reform work as well as the development of legal information materials for women experiencing violence and those providing services to them. Through this second area of work, we meet and hear from literally thousands of women across Ontario each year who need our support because they do not have access to adequate, or indeed any, legal representation. Many of these women are involved in one kind of alternative dispute resolution or another, and most of them do not have happy stories to tell about those experiences.

**Ms. Dale:** YWCA Toronto is the city's only multi-service organization by, for and about women and girls. Since our national founding in the 1870s, we have grown to a member-based organization active in over 14 communities in Ontario. We have 38 member associations in Canada. We're also an international organization, and worldwide we have 25 million members in our association.

YWCA Toronto works in four main program areas: housing and shelter, girls' and family programs, employment and skills development, as well as advocacy on public policy. Across Canada, we are the single largest provider of shelter and housing for women and the largest provider of employment programs for women.

In Toronto, we see more than 49,000 individuals a year. We normally work with them to help them make significant changes in their lives through finding work, counselling, shelter, permanent affordable housing and a number of family programs that address parenting issues. In all of these programs we've seen women who go through formal and informal processes around separation and divorce, and our intervention on this matter comes through that program experience.

Each of us here—both Pamela and myself—represent the broader concerns of our organizations and their membership. Our membership's spontaneous and overwhelming outpouring of concern for the equity guarantees of a secular, public and universal system of law has motivated and fuelled the campaign to end religious arbitration of family law disputes in Ontario; that is

everyone from our volunteer boards of directors all the way through to individual women in our programs.

**Ms. Cross:** We're here today to speak in support of Bill 27, because it will guarantee that family law arbitrations in Ontario will be conducted using only Canadian and Ontario law. It also ensures that other principles and rules, including religious principles, will have no legal effect and will amount to advice only.

We realize this has not been an easy issue for the government, by which we mean all three parties, and individual politicians as well as all Ontarians to grapple with. It has required a balancing of different and at times apparently conflicting interests. This has often been posed in the public debate as the rights of women versus the rights of communities to diverse religious and cultural values.

We want to clarify this morning that we and our membership hold these two Canadian values equally strongly. There is nothing in this bill that in and of itself limits religious freedom; it simply clarifies the role of the religious leader and the role of the state. In a secular liberal democracy, religious beliefs have an important role to play in civil society, community and the private lives of citizens. However, they have no place in the enforceable laws of the land. Bill 27 clarifies this confusion in the existing Arbitration Act of Ontario, an act that we believe was never intended for anything but commercial disputes.

**Ms. Dale:** Our boards of directors and our membership bases are made up of women of many faiths. The questions they brought to this debate were:

How do we respect the rights of women to make autonomous decisions for themselves, including faith-guided life choices, while ensuring that the most vulnerable are protected from abuse, manipulation and coercion?

How do we ensure universal access for all women to equality, regardless of belief or community affiliation?

We believe that Bill 27 answers these questions, with some provisos.

*Interruption.*

**Ms. Dale:** I'll just wait till the distraction ends.

We are very pleased that the government has seen fit to address the issue of religious arbitration in a general way, rather than focusing on any one or two specific religions. You may recall that the issue of arbitration and religious settlements in divorce and child custody has been a very big issue in British Columbia among fundamentalist Christian groups. This is a concern that our BC association brought to us, so it is not simply a matter of Muslim women.

We know that it has been challenging to frame the debate and the legislation in an anti-racist way, especially in a time of global Islamophobia and rising anti-Semitism. However, in and of itself, the bill makes no comment on existing religious freedom to solve any dispute according to any system of belief. Bill 27 simply prevents the waiving of individual rights that exist under the public system of law and in the Family Law Act of Ontario when doing so.



**Ms. Cross:** When passed, Bill 27 will ensure protection for those with the least institutional power in Ontario, and for this we applaud the Premier, the Attorney General and all those who support it. It is clear the drafters of this bill have worked long and hard to create legislation that will be effective. A great deal of legal expertise has gone into the drafting of the language—language that we would be concerned to see adjusted in any way. We believe, after careful reading, technical briefing and community consultation, that tinkering for political appeasement would only serve to open loopholes that undermine the intent and effect of the bill.

We're pleased to see the guaranteed right of either party to appeal an arbitral award. Certainly, one of the positive aspects of arbitration is its finality, so we can appreciate that some would want to see the present regime, under which the right to appeal can be waived, maintained. However, our focus in reviewing this legislation has been primarily on women in abusive situations, in which they can be very vulnerable to being intimidated, coerced or otherwise manipulated into agreeing to waive this right, when that is not in their best interests or even what they really want to do. We urge the government to maintain the clauses relating to the right to appeal as they now appear in the legislation.

**Ms. Dale:** We do, however, have some concerns that we would like to see addressed, either by way of friendly amendment or through regulations.

The first is that the absence of changes to legal aid to support the legislation is a serious gap. Bill 27 requires mandatory independent legal advice for anyone using arbitration to resolve a family law dispute, which is a very good thing. However, legal aid is not presently available for arbitration. Many women in Ontario cannot afford to pay for a lawyer, and certainly that's true for all of the women who use any of our programs at YWCA. So this is a serious problem for us, and I think it structurally enforces an inequality that's not intended by the written word of the bill. This is not acceptable, so we're asking that changes be made to the Legal Aid Act to mandate and budget to ensure that legal assistance is available for arbitration.

Because this bill essentially codifies family law arbitration in Ontario for the first time, we also believe in a mandatory review after three years, which we think would be a sufficient amount of time to see how it's working. We believe, because of our experience with vulnerable women, that women's equity-seeking organizations should play a role in the monitoring and review process, with appropriate financial support.

While it is true that we believe women are better served through the system of public laws in Ontario, it is also true that those laws and processes continue to reflect outdated principles and values that make them culturally inaccessible to many. We strongly encourage the government to take steps to ensure that the laws and processes governing family breakdown achieve cultural competency by requiring and supporting appropriate services

and by training those involved in the justice system to understand cultural difference within an equality framework.

Finally, we would like to see this government undertake a review of the Family Law Act, especially those provisions dealing with domestic contracts, to ensure women's equality rights are not compromised in ways that Bill 27 is meant to overcome.

**1040**

**Ms. Cross:** I'm going to leave the topic of religious arbitration for a moment to speak to another section of Bill 27. We also want to note our support for the amendment to section 24 of the Children's Law Reform Act, which will require judges to consider family violence when hearing custody and access cases. This amendment will have a positive impact immediately on women seeking custody after leaving an abusive relationship.

Just as we have some concerns about the sections of Bill 27 dealing with arbitration, we also have some concerns about the CLRA amendments. The language of the amendment dealing with violence is gender-neutral, which does not reflect the reality of violence within most families. At present, violence at the hands of their husbands or common-law spouses is the single major cause of injury among women in North America, more frequent than auto accidents, muggings and rape combined. We're seven times more likely to be killed or hurt in our homes than by a stranger. Unfortunately, women are increasingly being what is called "dual-charged," in cases of domestic violence, when police fail to conduct a thorough investigation to determine the primary aggressor. Making the legislation gender-neutral contributes to a climate of inaccuracy, and therefore ineffectiveness, in the policing and prosecution of this crime.

We urge the government to include a definition of abuse that explicitly excludes acts taken in self-protection or in the protection of other vulnerable family members such as children.

**Ms. Dale:** We hope the parties that make up the government of Ontario can work together to enhance this legislation and to ensure its speedy passage into law. We do not feel that a longer debate will change the principle at stake. It is the very cornerstone of a secular, rights-based legal code: one publicly accountable, universal set of laws for all, a common bond for public life, in a society that fosters tolerance and support for a multiplicity of private beliefs.

Our members have galvanized a common purpose on this matter across differences in profession, religion, race, culture and ethnicity. New loopholes, if created, will renew only their determination. In the meantime, you can count on our support, in the implementation of Bill 27 to strengthen what is, overall, a solid piece of legislation.

**The Chair:** Thank you, ladies. You've left about six minutes for each party. I apologize for the banging and knocking that you heard in the process of your deputation. We are attempting to prevent that from happening with future delegations.



We'll begin with Mr. Kormos.

**Mr. Kormos:** Thank you very much for your submission, for your participation in this debate, and, I'm confident, in your provocation of the government to bring this matter forward.

The previous submitter made reference to the reality or unreality of primarily women having access to legal counsel. It's a matter of finances. In our experience, or in mine, at least, even a legal aid certificate is not adequate. Family lawyers simply won't accept them because of the practicalities, the impossibility of doing a service to that client.

The other issue, then, of course, is paying for the arbitration. I have a perspective on this. Do you expect to see low-income, even middle-income, people accessing arbitration? I spoke with an arbitrator yesterday who charges \$2,500 a day, and then of course you have to rent the facility. If it's going to be an appealable ruling, there has to be some consideration—I'm going to ask questions of the parliamentary assistant on clause-by-clause about this—of doing a transcript so that there's a record to appeal.

That's not to say that litigation in the public courts isn't expensive too. But there it's the legal fees. People in arbitration presumably will still have lawyers representing them. Is this going to be accessible to low-income people, when it's a pay-as-you-go process that is, in and of itself, very expensive?

**Ms. Cross:** I'll speak to that. I want to answer it in two parts.

First of all, our focus in looking at Bill 27 has been the need to eliminate the use of religious laws in the resolution of family law disputes. That's really, in our opinion, what Bill 27 was created to do and what it does.

The whole issue of arbitration more generally is a much hotter potato. It's not really what we're here to talk about today. Some of our organizations have a broader position opposing arbitration, period, much more like the Quebec position, which Mr. Runciman raised earlier. That's another debate.

Our concern with Bill 27 is that when people, primarily women, as you have identified, decide—and I use that term even a bit tentatively—to use arbitration, they have access to legal aid to assist them with that. That means there has to be not just more dollars, there has to be a change to the mandate of Legal Aid Ontario now, because presently arbitration isn't one of the matters that's covered by Legal Aid Ontario. It means that, indeed, things like the cost of the arbitration, the rental of the facility—all of that's going to have to be looked at. The availability of dollars for legal representation has to be looked at. The ceiling, as you pointed out earlier, has to be looked at.

I know how complicated it is. I'm a lawyer; I used to have a family law practice. I know that—and this is going back a number of years—when I represented a woman in an abusive relationship on a legal aid certificate, I was probably paid for about a third of the hours

that I put into the file. There are many lawyers who do that.

The legal aid question is enormous, but I think it's important for the purposes of these hearings today to focus, at least for our organization, on the measures that would eliminate the use of religious law in the arbitration of family law disputes.

**Mr. Kormos:** I spoke to another arbitrator recently who told me what she says is a real-life example: two French citizens—spouses—living and working, for the moment, in Canada, who want to end their marriage and resolve all the property issues etc. and have French law apply, because their assets—the home, the matrimonial assets—are in France. Of course, under the existing regime that would be possible, because litigants in arbitration can choose any legal scheme they wish. This law would preclude them from dealing with that, notwithstanding that they were using a public law of their homeland, if that's not an unfair statement. Again, I present this to you without any preconceived judgment on it. What do you say to those folks?

**Ms. Dale:** I think you need to look at the broader principles at stake and measure what is most crucial: a convenience or the principle of separation of religious and state law? We've repeated it several times here, not to be annoying but because to us it is the principle that gets lost when we get into debates that pander to other bigotry or to inflammatory statements. Not that I'm saying that's what you were doing just now, but I—

**Mr. Kormos:** They're talking about French law, the law of France.

**Ms. Dale:** Yes. To me, when you start picking and choosing between forms of law outside of the one that your own electorate has agreed on, you're into a principled difference, and that's the crucial switch for us. This is a democratically elected government that's supposed to oversee the public laws that are accountable to that same electorate. We have the guarantee of protection under those laws. Those are the ones that we are governed by.

**Ms. Cross:** I think it's also worth pointing out very briefly that it hasn't escaped our notice that the only issues that have been debated here are family-law-related issues, which have a profound and particular impact on women and children. Nobody has proposed, for instance, allowing two citizens from a country where the smoking of marijuana is legal to argue the law of that country if they're charged in Canada with that offence. So it's offensive, I think, to try to argue that we should open ourselves up to letting laws of other countries apply here when we're only talking about the one area of law which has more impact on women than any other one, and that's family law.

**Mr. Kormos:** Thank you kindly.

**The Chair:** Thank you. Mr. Zimmer.

**Mr. Zimmer:** Your submission clearly makes the point that you're in favour of one law for all religious and faith-based groups and so on. At page 2, you also make the point on the need to understand and accommodate



cultural difference within an equality framework. At first glance, that might appear to be a conflict to some people thinking this exercise through. Can you elaborate on how you see the right balance being struck between the one-law-for-all theme of your presentation and accommodating and respecting cultural differences in an arbitration system?

1050

**Ms. Dale:** I don't think it's a contradiction simply because I think the context of people's lives is critical to a true access to that one universal system. We see it all the time in the context of a woman whose immigration status depends on the partner who's also abusing her. That context limits the choices she's going to be making to access her rights, because she fears that her immigration situation will alter unfavourably if she exposes the abuse that she's subjected to, even though the laws of Ontario would, at first glance, protect her.

That's the kind of context which needs to be understood to be able to allow citizens to access their rights in a truly democratic and equal way. It doesn't mean you have to change the law; it means you have to change the access to the law, and that access is actually the cultural competency that we're talking about: to understand the power differentials of people who are coming into your courtroom.

**Mr. Zimmer:** Thank you.

**Mr. Runciman:** I appreciate your submission. I'm curious about a couple of things you mentioned. You talked about requiring judges to consider family violence and then you talked about gender neutrality. Could you be a little more specific in what you're suggesting along those lines?

**Ms. Cross:** What we would like to see in that provision, as we've indicated at the top of page 4, is simply that there be a definition of "abuse" contained there that explicitly excludes acts taken in self-protection or in the protection of other vulnerable family members. For instance, in a situation where a woman is leaving an abusive spouse and making a claim for custody, assuming these amendments pass, the judge now says, "I'm required to look at family violence, so I want to hear evidence from both of you about that," and he says, "On one occasion, she took a swing at me, too." We want her to be able to say, "Based on the legislation, my act is excluded from consideration because I was acting in self-protection," or, "I took a swing back at you because I was holding the baby when you were coming toward me." We want the legislation to set out that distinction, that there will be occasions when women—I don't even like to use the phrase, but I will, just for speed here—make an act of violence. It's really an act of self-protection or to protect another vulnerable family member. We don't want that to be used against her in a subsequent custody hearing.

**Ms. Dale:** What we've seen in the United States, just to clarify this a bit, is some distinction made in the prosecution of these cases between the primary aggressor and a subsequent or isolated act of violence. The primary

aggressor theory and the use of that framework has really helped weed out those situations where policemen are saying, "I can't make a determination, so I'm going to counter-charge the woman because it's a he says/she says." But the pattern of domestic violence which we have, unfortunately, 30 years of good research on actually shows patterns of primary aggression and defence. Without the use of that knowledge base, we get these kinds of equalizing of any act of physical contact, which in fact are not equal.

**Mr. Runciman:** If there's a question surrounding primary aggressor, what you're suggesting is the requirement of a judge to make a determination based on testimony before him or her. You're not suggesting—you referenced, and I think you supported that in the comments you just made, that police in some instances fail to investigate and determine who the primary aggressor is. Is that what you're suggesting? Is that the proposal you're making?

**Ms. Cross:** I think it's important to keep the two processes distinct. We know that only about 25% of women who experience abuse in the home ever call the police, so the presence or absence of any police record is irrelevant to proceedings in Family Court, or ought to be. There's a very different standard of proof, as you all know. In criminal court, the standard of proof is beyond a reasonable doubt; in Family Court, the standard of proof is on a balance of probabilities.

What we're suggesting is that in a Family Court proceeding, if family violence is a factor, the complexity of that issue be provided for in the legislation. That can be done relatively simply if the legislation, when defining abuse, says these kinds of acts and excluding acts taken in self-protection or in the protection of other vulnerable family members. Again, whether or not there's a police record in play, the judge can look at the evidence and determine, as judges have to all the time, particularly in Family Court, whose evidence is more credible.

**Mr. Runciman:** You're not talking about any specific reference to gender or gender bias? You referenced gender neutrality before, so that's why I'm raising that.

**Ms. Cross:** Well, there's the world of what we'd like and the world of what we think we can get. We'd love to see a lot more gender-specific language in a great deal of legislation. We think that's unlikely to happen and we think that a definition such as the one we've included in our submission would be very helpful.

**Mr. Runciman:** Thanks.

**The Chair:** Thank you very much for your submission today. We appreciate you being here.

**Mr. Kormos:** Chair, on a point of order: In response to the comments made by these submitters with respect to language used in other jurisdictions addressing the same matter, I wonder if legislative research might kindly give us some assistance, because their point is perhaps well made in terms of "shall" consider, as mandatory.

**Ms. Cross:** I can say, specifically with reference to the self-protective clause, that that information is



contained in the federal bill dealing with custody changes to the Divorce Act and it's very well crafted.

**The Chair:** I think you're asking for legislative counsel also to provide you with some background, as well as research?

**Mr. Kormos:** Yes, ma'am, please.

**The Chair:** Thank you very much, ladies.

#### CANADIAN JEWISH CONGRESS, ONTARIO REGION

**The Chair:** Our next delegation is the Canadian Jewish Congress, Ontario region. Good morning. I have a record there that there are four speakers, but there are only three?

**Mr. Stephen Adler:** Correct. There are only three.

**The Chair:** Okay. Are you all going to be speaking this morning?

**Mr. Adler:** We are.

**The Chair:** Great. As you begin, if you could identify yourself and the organization you speak for. You have 30 minutes when you do begin speaking; if you leave time, there will be questions afterwards should you have a comment that we'd like to ask you more information about. Welcome.

**Mr. Adler:** Chair, members of the committee, my name is Stephen Adler. I'm the director of public policy for Canadian Jewish Congress, Ontario region. Thank you for the opportunity to speak to you today on this significant piece of legislation. I'm joined by my colleagues Dr. Rachael Turkienicz and Mr. Mark Freiman, who I'll introduce in more detail in a moment.

Canadian Jewish Congress is a non-profit human rights organization concerned with the rights and freedoms of the Canadian Jewish community and all Canadians. We were organized in 1919 and act as the national organizational voice of the Jewish community on issues affecting the quality of Jewish and Canadian life. We speak on a broad range of public policy, humanitarian and social justice issues, including the status of women in Canada, family issues, and the concerns of the disabled, the poor and the elderly.

I'm also joined, behind us, by Mr. Steven Shulman, who is our regional director and general counsel for Canadian Jewish Congress, Ontario region.

To my immediate left is Dr. Rachael Turkienicz, associate chair of our national executive. Dr. Turkienicz is a professor of education at York University, as well as being a faculty member at the Centre for Jewish Studies at York University. She holds a Ph.D. in Talmudic and Midrashic literature and is a frequent commentator on radio and TV and in print on issues regarding the interpretation of Jewish texts. Dr. Turkienicz is also a board member of the North York Women's Centre.

On my extreme left is Mr. Mark Freiman. Mr. Freiman is the honorary legal counsel for Canadian Jewish Congress, Ontario region. He is a constitutional lawyer at McCarthy Tétrault. He holds a Ph.D. from Stanford University in modern thought and literature and has taught in

the United States and Canada. Mr. Freiman served the people of Ontario from 2000 to 2004 as the Deputy Attorney General for the province of Ontario.

**1100**

**Dr. Rachael Turkienicz:** Good morning. I'm Rachael Turkienicz. I just want to thank you again for the opportunity to share our views for your consideration on the Family Statute Law Amendment Act of 2005.

As stated, I'm an officer of the Canadian Jewish Congress on both the national and regional levels. I am also personally active in the protection of women's rights and in assisting women who find themselves in vulnerable situations.

This committee has heard, and will continue to hear, various perspectives rightly concerned with the possible exploitation of women in our province. I am equally concerned with this possibility and I am therefore here as a representative of CJC.

Canadian Jewish Congress shares my concerns about women's rights and the vulnerability that can occur whenever there is a dispute involving people of varying power levels. CJC agrees that it is important to protect people from decisions that don't conform to Canadian principles, values or the Charter of Rights and Freedoms. We agree that these principles, values and laws need to be the common foundation upon which any conflict resolution must stand.

CJC also agrees that anyone who chooses to seek resolution from a faith-based panel of arbitrators must truly consent to participate. We are adamant that such consent must be real, and given freely and without coercion.

Although we all have common ground with these important aspects, Canadian Jewish Congress does not agree that the solution to these concerns is to remove the governmental support of faith-based arbitration.

A woman of faith may choose to resolve her marital status within a faith-based arbitration setting since she is familiar and comfortable with the language, the expression of values and the understanding of her faith and the unique place it holds in her life. Until recently, any woman of faith could also be assured that as a citizen of Ontario the government would support a decision that conformed with Canadian law and values. By removing the Canadian legal support, the government has removed her safety net.

Changes to the legislation are needed. These changes must ensure that the act doesn't focus on issues that effectively have the state controlling matters of conscience, faith or religion while doing little to advance protection against the abuses we all agree must be prevented.

If the concern of this legislation is to ensure that all parties are treated fairly and with one legal standard, the legislation should consider regulating the arbitration and family law to protect the rights of the potentially vulnerable and support their choices of expression.

Faith tribunals are empowered by their faith communities. They will continue to be sought after by people of faith as a trusted venue for resolution. As a Canadian,



it is important to support each person's personal choice of the lens through which they prefer to see Canadian principles expressed. Rather than removing the support of the government, CJC believes that the legislation should stand strongly beside any woman who chooses to express herself through her faith, knowing she need never compromise her Canadian sensibilities.

I now ask that you kindly turn your attention to Mark Freiman, honorary legal counsel for Canadian Jewish Congress, Ontario region.

**Mr. Mark Freiman:** Members of this committee, it's a pleasure to be back at Queen's Park, even briefly. You'll see that old habits die hard; we have produced what are technically called, in the parlance, slides, which may help with the presentation this morning.

I'm going to start on slide 5, if you want to read along. Alternatively, I think the slides might be useful as an aide-mémoire to specify exactly what it is that Canadian Jewish Congress wishes to emphasize today.

Let me just start by telling you that we are talking about arbitration; we are not talking about criminal laws. One of the previous speakers suggested that maybe we're talking about imposing foreign law to determine who is guilty of an offence. We are not talking about asking judges to use foreign law; we are talking about arbitration, and about family law arbitration.

Let me begin, because my purpose today is to take you through the legislation and to discuss with you just exactly what it is the legislation does and does not do, with an aim to persuading you that whatever high purpose and whatever legitimate concerns one might have about the use of arbitration in family law matters and the kinds of principles that might be applied in family law matters, this legislation overshoots those principles and leads to entirely unintended and, I think, clearly undesirable results.

Let me start with arbitration. The purpose of arbitration is to provide parties with an option outside of court to resolve their disputes, in an enforceable manner, by agreement. That is, they are allowed to agree upon who's going to resolve the dispute; where that resolution will take place; importantly, when it will take place, by whom and at what cost. They can also decide what principles and values they want to see reflected in the result.

The great benefit of arbitration is to allow parties to resolve disputes in a manner that's meaningful for them internally. It allows them to control the principles, it allows them to control the process and it allows them to control the cost of resolving a dispute. That's why in Ontario since 1991 we have held that in civil matters it is permissible—if you go to an arbitrator and have an arbitration that is genuinely voluntary, you may enforce the results of that arbitration as though it were an order of the court. The value is that the dispute is resolved in a manner that respects the autonomy of individuals, reflects their values and increases the probability that they will act in accordance with the resolution. That is, they will internalize it, act according to it and then move on with their lives.

There are, however, two key issues in any arbitration, and I'm talking about arbitrations in the field of construction law as much as I am in the field of family law. The first is voluntariness. Arbitration only works and is only fair if people really do agree: if they agree that this is the right way to resolve their problems; if they agree that these are the right principles they believe in that should be applied to resolve their disputes. If there is any coercion, if there is any element of involuntariness, if there is no true consensus about values, then the submission to arbitration is doomed to failure and is in fact unenforceable, should not be enforced. Arbitration only works, and is only morally, ethically and legally correct, if it's voluntary.

The second is compatibility with Canadian values, and especially the Charter of Rights and Freedoms. The result of an arbitration pursuant to the Arbitration Act is enforceable as though it were an order of the court. No court will, and certainly no court should, enforce a result that violates public policy, that is inimical to our fundamental values, and certainly should never enforce a result that is contrary to the charter. Again, under the Arbitration Act and under practice under the Arbitration Act, any party is free to go to a court and say, "This result is incredible. It violates Canadian values. It violates the principles of the charter. It violates good public policy," and a court can, will and does refuse to enforce such an order.

In family law, these matters are heightened. It's very important to bear these two principles in mind. The Canadian Jewish Congress supports these two principles.

First, genuine consent: We recognize that many relationships in a family context are marked by a power imbalance. Because there is a power imbalance, there is a threat, a danger, that the party suffering from the imbalance—usually the woman—will be compelled to give consent, will not freely agree, will be coerced, will be bullied into agreeing to something that she, first, does not really agree with and perhaps even that she does not really understand, in circumstances where she may not even understand that she has options. That is an extremely important issue.

For that reason, we say it is entirely appropriate—we're on page 8 now—to have special rules and special safeguards in family law arbitrations to ensure that consent is genuine and that it's based on full information about the process and full information about the alternatives to the process: You don't have to go to arbitration; you can go to a court. Those are legitimate concerns. Those are legitimate safeguards and responses.

#### 1110

The second area is compatibility with Canadian values and rights. We believe that it is important that any result be fully compatible with Canadian values, with Canadian principles and with the Charter of Rights. What we do not believe, however—and we may part company with some of our colleagues talking to you today—is that it is inherently unacceptable to resolve family law issues on the basis of genuinely voluntary arbitration that is



informed by a faith. We also do not believe that faith-based arbitration is inherently and necessarily unfair. We believe it can be fair. We do not believe that faith-based arbitration inherently or necessarily is incompatible with Canadian values, with Canadian legal principles or with the Charter of Rights. From that perspective, it is our view that it's appropriate for the legislation to contain clear and effective safeguards to ensure that consent to arbitration is indeed voluntary, genuine and based on full information, but that it is not appropriate that legislation prevents parties from freely agreeing to have their disputes resolved by a qualified decision-maker of their choice.

The issue of values: We do not believe it is appropriate for legislation to disallow enforceable resolutions to disputes based on freely agreed-to principles, including principles founded on faith, conscience or belief, so long as those principles are compatible with Canadian values and with the Canadian Charter of Rights and Freedoms.

Members of the committee, it is our submission to you that the text of Bill 27 raises serious concerns on each of these issues.

First, the issue of voluntariness: I've already said that the Canadian Jewish Congress accepts the need for clear, consistent safeguards to ensure voluntariness based on full information and genuine agreement as to principles. However, the text of Bill 27 leaves all of that to the regulations, and the regulations, I'm sad to say, have absolutely no specificity from the legislation. There is nothing to guide and there is nothing to inform us as to what the content of those regulations will be.

The Canadian Jewish Congress notes, to its dismay, that the run-up to the introduction of Bill 27 was marked by a failure of consultation. There was little, if any, dialogue with the interest groups, with what we call the stakeholders of this legislation, before the theory behind the act and then the language of the act was passed. That failure to consult, I respectfully submit to you, led to some of the defects in the legislation and led to its overshooting, as I'm going to show you, its actual purpose and landing in a very bad place indeed. It is our fear that simply allowing all these questions of voluntariness and genuine consent to be dealt with by regulation raises the probability, and at least the possibility, that once again the regulations will come out with no consultation, no prior discussion, and will themselves overshoot the mark.

The text of Bill 27 simply says that the Lieutenant Governor in Council can make regulations touching on a number of things, including what must be and what may not be in any arbiter document, what qualifications an arbitrator should have, what the arbitrator must set forth and what the arbitrator must be trained in. All of these are indeed extremely important issues, but we don't have a clue what's going to be said, and depending on how reasonable or unreasonable the regulation is, it will either lead to genuine consent or it will do, by indirect means, what the legislation could not do by direct means because it would violate the charter. So the Canadian Jewish

Congress is extremely concerned that, without consultation, the regulations will follow the *[inaudible]* Bill 27 and overshoot their mark.

Bill 27, in our respectful submission—and this is the most important point I'm going to make today—overshoots what's necessary to ensure compatibility with Canadian values and with charter rights. Subsection 2.2(1) makes unenforceable any family law arbitration that is “not conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction.”

Members of the committee, those words are not going to give you the protection that you think they will, they are not going to lead to the result that you think they will and they will end up causing anguish and unnecessary hardship in faith-based communities. Let me tell you why.

First of all, the words in this section say it is unenforceable if it is “not conducted exclusively.” Now, “exclusively” as a word suggests that any idea, any value, any insight, any principle that is not found specifically in the substantive law of Ontario can't be relied on in any way in a decision regardless of whether or not it's compatible with Canadian legal principles, Canadian values or charter rights. Let me give you an example.

Let us say that two people voluntarily agree to go to a wise elder statesman—not a religious figure, because this legislation, you'll notice, says nothing about religion. I heard Mr. Kormos asking a very important question. The law of France is just as alien to this bill as law based on ethical doctrines in any of the world's great religious bodies.

So let us say we go to someone who is not religious and not even a member of the court in France—because maybe that's not civilized enough in this jurisdiction—but a very civilized, well-respected person who two family members agree would be very well placed to resolve their family law dispute.

The elder says, “My belief is that a little bit of sugar goes a lot further than a lot of vinegar. So I'm going to make my order full of incentives to give rewards for good behaviour rather than structuring my award and my decision so as to punish non-compliance. So the more you abide by the rest of the decision, the more access you get, the more hours you can have.”

The recipient of the arbitration says, “Hey, I don't like this,” and goes to a court and says, “You can't enforce this. Show me anywhere that the law of Ontario says, ‘A little bit of sugar goes further than a lot of vinegar.’ That's not a principle known in Ontario law; it's not a principle known in the law of Canada. You can't apply it.”

It's a silly example, but we have lots of important ethical principles that are entirely compatible with the law of Ontario. A reference to one of those, if the word “exclusively” is correct, means that the arbitration has not been decided and has not been conducted exclusively in accordance with the law of Ontario, even though it's in every way compatible with Canadian values.

Next, “in accordance with the law of Ontario or of another Canadian jurisdiction”: The words “in accord-



ance with” are not terms of art. They are not legally known words. You won’t find them in any law dictionary to tell you what they mean. What do they mean? Well, what I suggest may be an interpretation of these words is that the entirety of the proceedings have to be identical to the law of Ontario in procedural matters, in evidentiary matters and in substantive decision. This means, again, that if you have anything that is not identical with the law of Ontario in process, in procedure, in rules of evidence—in any aspect—it’s out of court regardless of whether it’s compatible with Canadian values and principles. On the other side, if you go to an arbitrator who comes up with a truly offensive concept that is inimical to Canadian values and Canadian legal principles, nothing in this bill says it can’t be enforced if the arbitrator doesn’t have reference to some foreign body of law or to some principle outside of Ontario law.

1120

This is important because Bill 27 has a disproportionate and unjustifiable effect on religious communities and on persons holding religious beliefs. The background of the bill is clear: It was designed—and witnesses today have told us—to prevent faith-based values and principles from entering into the resolution of disputes. If one assumes generally voluntary consent and one assumes no conflict and no incompatibility with Canadian values, there’s no reason to do that. In fact, it is insulting to faith-based communities to suggest that their ethical principles and the wisdom they have accumulated over the ages is inherently unfair or incompatible with the just resolution of disputes. It is insulting to women, and especially to women of faith, to suggest that women can never freely, openly and genuinely consent to a resolution of their disputes that is consistent not only with their faith but with their community values, consistent with their standards of decency, importantly consistent with their standards of modesty and importantly consistent with their standards of privacy. All of that is being eliminated by Bill 27.

Do we have any suggestions? We have. We do not believe that this bill does what it’s supposed to and we don’t believe it’s necessary. If it is the intent of the Legislature to pass such a bill, we believe that, at a minimum, two improvements are necessary.

First, we believe it is important, if we’re dealing with the safeguarding of principles in the regulations, that those principles, preferably by legislative fiat, be made subject to prior consultation. So the Lieutenant Governor in Council should not make regulations until it has consulted with stakeholders.

Secondly, the text of section 2.2 should be amended not to read that it’s not enforceable unless it’s “conducted exclusively in accordance with the law of Ontario,” but rather that it’s not enforceable unless it is compatible with the law of Ontario and with the values entrenched in the Canadian Charter of Rights and Freedoms. That gets you where you want to be. It tells you, “We’re not going to enforce something that’s unfair. We’re not going to enforce something that’s inconsistent with our values.

We’re not going to enforce something that is contrary to the Canadian Charter of Rights and Freedoms.” That’s fine.

I’ve listed on page 16 some unforeseeable consequences. Because I’d like to leave enough time for questions, I will leave you with the text of slide 16, about the unforeseeable, unintended and undesirable consequences. I remind you that this is going to have an effect not just on faith-based arbitration but on any arbitration. Anybody in a family law arbitration can come to court and say, “Don’t enforce this. It has not been conducted exclusively in accordance with the law of Ontario.” All that does is add uncertainty, cost, expense and time to the process, not what the people of Ontario are expecting. Thank you.

**The Chair:** You’ve left about a minute for each party to speak.

**Ms. Matthews:** I think you’ve made your argument very clear, and I appreciate your doing that for us. It obviously is the counter-argument to others we’ve heard. I appreciate your giving us that perspective.

**The Chair:** Thank you. Mr. Runciman.

**Mr. Runciman:** I don’t have a lot of time here, but I’m interested in much of your submission. You make some comments which haven’t been discussed at all here about the challenges to family law arbitrations, and you talk about court caseloads. As a former Deputy Attorney General, you could perhaps elaborate on that. That’s a significant concern of anyone observing the system. We had a situation in Niagara Falls recently—I think it was Niagara Falls or Windsor—where it was an application to Family Court for a peace bond, which had something like an eight-month wait before an appearance, and there was a terrible murder. I just wonder if you could comment on what you see in terms of the problems that this is going to create with respect to Family Court.

**Mr. Freiman:** Let me take it from the other end. Arbitrations, mediations and alternative dispute resolution have been introduced into our system in order to try to relieve the backlog in the courts, alleviate high costs, simplify matters and allow people to have a say in what rules are going to be applied in resolving their disputes. I submit that even non-faith-based family arbitrations will have pressure put on them because of the uncertainty. If you make family law arbitrations questionable as to their enforceability for anyone, that means that cases that have been taken out of the system are going to be reintroduced into the system. Our system is overloaded as it is; waiting times have increased steadily over the past three years. Instead of being an assistance to take things out and to clear the way for things that only a judge can do, this will clutter our courtrooms, add costs and inevitably bring people back to you asking for more money for the court system.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** I want to make sure I understand something you said in the latter part of your comments. You left the impression that should an arbitrator comply with whatever standards are set by the province, joining what-



ever group of arbitrators and being certified by whatever group, and should that arbitrator conduct an arbitration and purport to apply the law of Ontario, saying all the right things, but nonetheless attach to his or her interpretation of the law, and his or her exercise of discretion within the scope of the law, all of the inherent biases of his or her faith—and I say “biases” neutrally—that could well be a perfectly legitimate arbitration. In other words, somebody could import—let’s be candid—sharia principles into an arbitration, however vague those are, as long as they say all the right things, cross their t’s and dot their i’s.

**Mr. Freiman:** Let me not be invidious about it. Let us say that Reverend X conducts a faith-based arbitration, and this reverend is from an unknown sect that believes that men should always get custody and women should never get custody. If Reverend X conducts the arbitration and says, “The law of the province of Ontario provides that I must look only to the best interests of the child. I’ve looked only to the best interests of the child, and I find that the father should get 100% access and the mother should not,” that’s not challengeable. It’s been conducted exclusively in accordance with the law of Ontario and has not been conducted in accordance with any other law. If Reverend X were to say, “I have listened to everything, and my holy scripture says that only a father can have custody. Therefore, I interpret the words ‘the best interests of the child’ in light of my religious beliefs. I’m giving it to the father,” that isn’t enforceable. It’s the same arbitration. It’s a question of learning what the language is.

**The Chair:** Thank you very much for your delegation this morning. We appreciate your being here.

#### INTERNATIONAL CAMPAIGN AGAINST SHARIA COURT IN CANADA

**The Chair:** Our next delegation is the International Campaign Against Sharia Court in Canada. Good morning and welcome. After you’ve introduced yourself and the organization you speak for, you’ll have 30 minutes. If you leave time at the end, we’ll be able to ask you questions.

**Ms. Homa Arjomand:** Good morning. I want to thank you for giving me this opportunity to address this hearing on Bill 27. My name is Homa Arjomand. I am the coordinator of the International Campaign Against Sharia Court in Canada. I’m very pleased to appear at this hearing and to comment on some of the proposed amendments to the Arbitration Act, 1991, the Child and Family Services Act, the Family Law Act and the Children’s Law Reform Act. During my speech, I will give you some background and information about myself, my work, why and how my fellow activists and I organized the opposition to faith-based arbitration in Ontario, and lastly, our views about some of the proposed amendments.

#### 1130

**My background:** Prior to my arrival in Canada, I was a lecturer and human rights and women’s rights activist in Iran. While living in Iran, I saw the rise of political Islam and with it the application of sharia law. The rise of political Islam pushed back the women’s liberation movement in Iran and lowered the standard of that society by legalizing gender apartheid and enforcing religious family law that openly discriminated against women and children. As the power of political Islam grew in Iran, I witnessed the execution of all my fellow activists. Let me repeat: All my friends were executed for their belief and work in human and women’s rights issues in Iran.

My husband and I, along with our two children—one was an infant—were forced to flee Iran on horseback to Turkey in the winter of 1989. There I worked for the United Nations and witnessed even more of what political Islam did to women’s and human rights activists in the Middle East. Discrimination and gender-based persecution in the areas of marriage, divorce, child custody and so on are the reasons that many women flee societies which are ruled by political Islam and seek refuge in Canada and in the west. We too came to Canada in December 1990, believing we never again would lose the principles and laws that humankind has fought for over the past two centuries: namely, the principles of equality for all, women’s rights, children’s rights, freedom of speech and assembly, freedom of belief, as well as the right to citizenship in a secular society.

For the past 12 years, I have worked as a transitional counsellor for abused women in Canada. Many of my clients come from so-called Muslim communities. I help these women and children to escape abusive and often dangerous family situations and to start a new life in a safe and secure home. In my work, I often see the unfair treatment of women and children when they use faith-based arbitration. Most of these women receive very little in the way of financial support and often have no right to see their children. Sometimes, after a divorce, the father will send his children, particularly girls, back to his home country to be raised by a family member and then push them to marry at a very young age even though they are Canadian citizens.

A summary of my campaign: On October 23, 2003, Mr. Syed Mumtaz Ali, president of the Canadian Society of Muslims, announced the opening of the Islamic Institute of Civil Justice. In his announcement, Mr. Ali said that to be a good Muslim, you must use sharia law for family legal matters. This political statement was not only coercive but also a direct threat to devout Muslims who prefer to use Canadian laws. Mr. Ali’s statement shocked me because his proposal has nothing to do with someone’s personal beliefs. It was in fact very political. He claimed that his legal authority was based on Ontario law.

Through my work as a transitional counsellor, I was well aware that faith-based arbitration was occurring.



However, I had wrongly assumed that it was being practised illegally behind closed doors. At the time, I did not believe that Canada would permit arbitrations of family legal matters based on religious law. However, when I investigated further, I discovered that the Arbitration Act, 1991, section 32, "conflict of laws," did indeed permit family arbitration to be based on religious law. This discovery saddened and worried me and other activists.

To us as experienced defenders of women's and children's rights, the Arbitration Act, 1991, provided a green light for political Islam to widen its reach and tighten its grip on the lives of Muslims living in Canada. We thought it was our duty to inform the Canadian public of these threats to their freedom. All of us were motivated by a common concern that political Islam was trying to expand in Canada by promoting the use of family arbitration based on sharia law. We were sure that the rise of sharia court in Canada was not just a coincidence; it was a part of a global move of political Islam. We decided to take action, and our proposal was to ensure that there was one law for all and that that law should be the Family Law Act of Ontario.

Our international campaign started in Toronto on October 30, 2003, with a handful of supporters. Today it has grown to a coalition of 183 organizations from 14 countries, with over 1,000 activists who volunteer their time and skills. A similar movement to end the use of sharia law exists in other countries such as England, France, Sweden, Norway, the Netherlands and so on. The activists in these countries are watching closely—very closely, in fact—to see how Ontario decides on this issue.

Recently, some honourable members here have said that there was little or no public debate on the issue of faith-based arbitration. I find this claim surprising since our campaign was a very public effort and Mrs. Boyd's inquiry consulted a broad spectrum of the concerned public and faith communities. We all had a fair chance to make our views known to the government and to the press and public. Our campaign supporters wrote and called their members of Parliament, organized hundreds of public protests and meetings, handed out flyers, conducted polls, issued press releases and participated in debates across the country, including a few at the University of Toronto. Quite often, I debated with activists from the Muslim and Jewish communities who were in favour of faith-based arbitrations. These events were well attended by the public and were widely reported in the Canadian and international press. My colleagues and I, as well as our opponents, were interviewed by the press on a regular basis. On average, I personally responded to at least a dozen interviews each week from Canadian to international journalists. Some of the news agencies that interviewed me were the CBC, CTV, OMNI, TVO, the BBC, the Toronto Star, the Globe and Mail etc.

In May 2005, we conducted a poll in Ontario which found that 76% of both men and women agreed with the statement, "All Ontarians should be governed only by

family laws and courts of Ontario." When it came to provincial voting intentions, NDP voters showed the most support for family law and the courts of Ontario, at 81%, followed closely by the Liberals at 76% and the Conservatives at 74%.

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This past August, we brought Dutch politician Ayaan Hirsi Ali to Canada to speak at the University of Toronto about political Islam and sharia law. We also showed her film submission, which is about the treatment of women in Islam. Over 400 people attended the Friday night event to hear her speech, to ask questions and see her film. Sixty-six news organizations attended our press conference that night. Today, over 28,000 people are on our e-mail list; 12,000 of them are from Canada, most of them are from Ontario, and 11,659 people signed our petition to end sharia law in Ontario. The petition, as well as many of the media interviews, can be seen on our website, [nosharia.com](http://nosharia.com).

Our view on some of the amendments: In general, my fellow activists and I are very pleased with the proposed amendments. I will comment on some of them now.

Subsection 2.1(1) of the Arbitration Act bill now clearly states, "Family arbitrations, family arbitration agreements and family arbitration awards are governed by this act and by the Family Law Act." We are very pleased with this amendment.

Section 32 of the Arbitration Act concerning conflict of law now clearly states, "In family arbitration, the arbitral tribunal shall apply the substantive law of Ontario...." This change corrects the heart of the matter and ends the use of religious law for family arbitration. We are most pleased with this amendment.

Section 45 of the Arbitration Act now provides an opportunity to appeal a family arbitration award to the Family Court or the Superior Court of Justice. The right of appeal was not available before. We are very pleased with this amendment.

Section 50.1 of the Arbitration Act bill clearly states, "Family arbitration awards are enforceable only under the Family Law Act." We are very, very pleased with this amendment.

The addition of section 58 to the Arbitration Act concerning regulation is welcomed. We look forward to reviewing the details of these regulations, which will be developed by the Lieutenant Governor in Council. We hope the new regulations will achieve the following results: establish training and professional standards for arbitrators; establish effective, accurate, full and prompt reporting methods; enable arbitrators to conduct family arbitrations in a timely manner; define the accountability of the arbitrators; provide an opportunity to review an arbitrator's performance on a regular basis and, if needed, withdraw an arbitrator's official approval.

Clause 72(5)(b) of the Child and Family Services Act concerning duty to report now includes mediators and arbitrators. We are very pleased with this amendment. This amendment is a very good start at protecting our most vulnerable citizens: our children.



Closing remarks: I will conclude my speech by saying that the politically diverse members of our campaign, all the people who came to Canada from so-called Islamic countries and all the people who struggle for a better life here in Canada need and expect you to pass Bill 27. We believe this bill will end the interference of religion in our justice system, empower battered immigrant women, giving security to our children, and protect equal rights for all, regardless of race, religion, gender or ethnic background.

**The Chair:** Thank you for your delegation. You have left about five minutes for each party, beginning with Mr. Kormos.

**Mr. Kormos:** Thank you kindly, ma'am. I appreciate the May 2005 poll: "All Ontarians should be governed only by the family laws and courts of Ontario." That's a position, of course, that the NDP has been adamant about.

There's something I want to make very clear with respect to Marion Boyd and her report. We in the NDP have the highest regard for Ms. Boyd. We appreciate the tremendous work that she put into her report. One of the comments made very early on in her report was that her review "did not find any evidence to suggest that women are being systematically discriminated against as a result of arbitration of family law issues." As has been pointed out, of course there's no evidence because the arbitration, pursuant to any number of regimes or legal structures, is purely private. In terms of family law, that's one of our concerns in the NDP. Various observers and authors, whether it's Robert Nelson in the text on ADR that I referred to, acknowledge that there are certain areas of law that should not be submitted to arbitration because of the—Chief Justice Brian Dickson. Mr. Zimmer, I sent you a copy of that article by him in the law gazette; you read it, I'm sure. Chief Justice Dickson, once again, said that there are certain areas of law, including, he speculated, perhaps custody matters, that are so important that they shouldn't be conducted within the privacy of arbitration.

Again, I appreciate your participation here. I did want to point out that with respect to Marion Boyd, New Democrats have nothing but the highest regard for her and for the work she did. We don't agree with her, okay? It's as simple as that. We don't agree with her very-well-crafted conclusions, but we're not about to condemn those conclusions. It is but a point of view that has been part of the debate, and we respect that. We think it's important that she did what she did, because it is a position that has, in and of itself, validity. It's a way of approaching this. As I say, New Democrats don't agree with the conclusions reached by Ms. Boyd, but with the highest regard for her and the work she did.

The previous participation by Canadian Jewish Congress, Mr. Freiman, recommended—because section 2.2 says that an arbitration is not binding unless it's "conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction." The proposal was made that that be altered to read that it's not enforceable unless it is compatible with the law of

Ontario and with the values entrenched in the Canadian Charter of Rights and Freedoms.

Again, that's another point of view that's been presented. Let's be careful in the course of this discussion not to be dismissive of alternative points of view. Is that in any way a way of addressing the concerns that people have, to conclude that the decision must be compatible with the law of Ontario and with the values entrenched in the Canadian Charter of Rights and Freedoms? Do you accept that or do you reject that?

**Ms. Arjomand:** I reject that. I just want exactly family law. If there's something wrong with family law, it's everybody's duty to work hard and make it right. To me, family law has not been reviewed for the past—how many years is it now? Of course, the review of family law is important, and very important for us. If there is any misleading or if there is anything we have to correct or put corrections on or add to it to make sure that it is defending women's rights and children's rights, of course we'll do it together. But right now I'm concerned, and I emphasize that it should be family law, and one law for all. That's it.

When you talk about compatible, I'm just thinking about whether it's going to be exactly the same or whether it's the assumption that it is going to be the same. Assumption—I would never go with it because I don't know what will happen to it. I don't know what the assumption is. Who is there to say it's exactly the same as family law?

The law of France—you just mentioned it—could be much better than family law here. It could be; I don't know. But I want only one law for all, and if our law is not as good as French law, then I want all of us to participate and make it right and make it better than French law.

**Mr. Kormos:** Thank you kindly.

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**The Chair:** I apologize, Mr. Runciman. You should have been the first speaker. You have five minutes.

**Mr. Kormos:** No, I apologize. I should immediately defer to him because he's older than I am.

**Mr. Runciman:** I'm not sure about that.

Thank you for being here today. We very much appreciate your submission.

I think you were here for the presentation by the Canadian Jewish Congress. I may have misunderstood Mr. Freiman, and I'll have to check Hansard, but at the end, he was talking about the example, which I think he used in response to a question from Mr. Kormos, of a reverend who could make a decision based on meeting the requirements of the law, and suggesting that the same sort of dangers may still be present. I think that's why they are suggesting the two amendments they have proposed. I gather you don't share that concern. Were you listening to that?

**Ms. Arjomand:** To be honest, we do believe that it would go behind closed doors as well. That's why we strongly believe that public education would help so much. None of the public is aware of what's happening



here in this room and what Bill 27 is. In closed communities where they're hardly integrated with the wider community, of course the imam, the sheik or any leaders of faith can direct the community in any way they want. By public education we're hoping that we can get rid of this. That's one thing. But also, in the back of my mind, I would say we would give it two or three years, going through public education.

I use "public education" not only as education at elementary, high school and university; I'm talking about the public in general. Hopefully, that would come out and people would know about their rights, especially women, and they'd know where to go in emergency cases, where to go to resolve their family disputes.

**Mr. Runciman:** There's another suggestion here with respect to a requirement for consultation on regulations. Do you have any view on that proposal?

**Ms. Arjomand:** Yes, actually, I did. I wanted to leave it to the lawyers, but then I realized that nobody mentioned anything. I prefer a BA and at least two or three years of paralegal training. I am hoping for at least a regulation that shows they know something about our law and regulations, and that should be at least two or three years' paralegal training regarding family law.

**Mr. Runciman:** So you're very supportive of some form of public consultation before the regulations become finalized. That's what you're saying, I guess.

**Ms. Arjomand:** Yes.

**Mr. Runciman:** I was just curious about the consultation. You did participate in the Boyd process? Did you get involved?

**Ms. Arjomand:** Yes, twice: once three hours by myself, and once three hours with 35 members of the campaign, each of them a chairperson or coordinator of another organization. We met with her for six hours on two different occasions. We discussed all these matters. I even talked about actual cases of women who came to us after going through faith-based arbitration. She did understand all these things, and I was very surprised when she came out with those recommendations.

**Mr. Runciman:** Were you consulted by anyone in the government with respect to the announcement that the Premier made related to Bill 27?

**Ms. Arjomand:** Did I consult with—

**Mr. Runciman:** That was a surprise to you as well as many others, I gather, on a Sunday afternoon?

**Ms. Arjomand:** Well, I was so happy. The day was perfect, and I didn't care if it was 5 o'clock in the morning. To me, it was a victory. Don't forget, this is a political attempt, and we've already pushed political Islam one step. I looked at it this way: Women's rights are not in danger anymore. I'm positively sure that with this bill, if passed, women's rights will be intact. I'm so happy. It doesn't matter what time of the year or what day of the year it comes.

**Mr. Runciman:** Or what really caused the conclusion to be arrived at. Thanks.

**The Chair:** Mr. Rinaldi?

**Mr. Lou Rinaldi (Northumberland):** Thank you very much, Ms. Arjomand, for your input and your passion. It's a commitment not just here in Ontario but abroad.

I don't really have any questions, because obviously your presentation somewhat mirrors our government's attempt to deal with the issue. I guess the statement I want to add is the fact of how we got here today. We, as a government, commissioned Ms. Boyd for a report. We listened, I think—well, I know we listened, because we didn't agree with her report because we also know there are a lot of good people out there like yourselves and other groups. It's the same as the Jewish folks who were here before. I think it took time. I guess I tend to agree with you. Regardless of who made the decision, at the end of the day, the majority of the stakeholders involved were happy with the result.

I just want to say thank you for your commitment and keep on doing the good work that you do.

**Ms. Arjomand:** Thank you. I appreciate that. I'm so happy that I'm here. We have members of government who actually listen to us.

**The Chair:** Thank you for your time. We appreciate your being here today.

## MUSLIM CANADIAN CONGRESS

**The Chair:** Our next delegation is the Muslim Canadian Congress. Good morning and welcome. We're glad you're here. When you begin, could you say your names and the group you speak for. You'll have 30 minutes. Should you leave time at the end, there will be an opportunity for us to ask you questions.

**Mr. Tarek Fatah:** My name is Tarek Fatah. I'm communications director of the Muslim Canadian Congress. My colleague here is Hasam Mahmud, who is a scholar in sharia law and sits on our board as director of Islamic consultation. We will make a very short statement. We hope there will be more time for questions and answers, because this is a subject that is very close to our hearts.

Since the start of the discussion on the question of permitting religious law to be used in arbitration as a substitute for Ontario law, the Muslim Canadian Congress has maintained that there are two aspects to this debate: the legal question as to whether it is constitutional to allow private sector, for-profit practitioners acting as substitutes for Ontario family law court judges, and the political question of validating sharia law in Canada, thus enhancing the power of self-anointed religious clerics within the already marginalized Muslim community and its international implications.

We had proposed that no religious law be used in the Ontario judicial system and that disputes involving family law issues be removed from the Arbitration Act. However, our primary concern was that the proponents of introducing sharia law in Canada were part of a global movement that was inspired by Saudi Arabia and Iran and is trying to accord respectability and credibility to the power of clerics over the larger Muslim population. In



the Canadian context, it is like bringing the Maurice Duplessis era back to life, a time when the clergy in Quebec held sway over the lives of ordinary Québécois.

Even though we were hoping that Bill 27 would remove the application of the Arbitration Act in family law matters, we are pleased that, in the words of Premier McGuinty, “One law will apply to all Canadians.” We are urging members of the opposition to rise above political considerations and ensure speedy passage through this committee. We appeal to you not because we feel that Bill 27 is perfect, but because one law for all Canadians is a principle that helps build a more integrated society. The other option of permitting religious laws to substitute for Ontario law would not only further balkanize our communities but would make it more difficult for a marginalized religious minority like Muslims to integrate and fully participate as equal citizens.

As recent Canadians, we follow the edicts of Islamic law in our personal lives. We believe there must be a complete separation between religion and state in all matters of public policy. We believe that refusal to give the stamp of approval and sanction to any religious law is a step in this direction.

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I would like to add that, strictly speaking from a Quranic perspective, mediation in a family situation is restricted to two people, one representing the woman and the other representing the man’s family. So the proposals that were made were directly in contravention even if we had to apply Islamic law to a Muslim family.

We also believe that for the Muslim community, the application of religious law does not necessarily have to get the sanction of the state. The laws that have guided Muslims for the past 1,400 years have been applied and are working with Muslim families irrespective of whether or not they live in an Islamic state. These laws have been working prior to the creation of the modern nation-state and are above the laws that Parliaments discuss.

We also feel that the laws that guide us need to have the ability to be debated in Legislatures. Those that cannot be debated in Parliaments or Legislatures cannot be considered laws. Those who wish to make religious laws applicable in Ontario should first come up with the authorization that all the laws, whether they are from the New Testament or the Old Testament, whether it’s the Gita or the Quran, should be debated in Parliaments without the notion or threat of castigating those who oppose secular law as apostates, which has been done in this case.

We, as practising Muslims, have taken great risks in coming out and opposing this. We have been threatened not only emotionally but physically as well on the streets of the city. We have been called apostates and traitors to our own community. We can tell you that we know the people who were pushing for this law, and family values and Islamic law were the last things on their minds. They were representing a global trend to reintroduce theocracy, and Canada was one place where they could sneak in. Thank God for people of sanity in this province: the

current government, the New Democratic Party, which opposed it, and Mr. Tory, whom we also found very reasonable in listening to what we were saying, that there was consensus in Ontario that we cannot bring back medieval times, when laws that were considered to be divine and could not be debated in any Parliament were being introduced in this Legislature. Thank you very much.

**The Chair:** Thank you. You’ve left about eight minutes for each party. I’m going to give Mr. Runciman the floor first.

**Mr. Runciman:** I’ll cede to Mr. Kormos. I’ll go back to normal rotation. That’s fine.

**Mr. Kormos:** Thank you kindly, Mr. Runciman. Thank you, both of you gentlemen. Mr. Fatah—Tarek, because we know each other—first, I think we should all acknowledge that you have been one of the major provocateurs around this issue. I say that in the best sense of the word. You, along with more than a few others, have been critical in bringing the debate to the surface.

However, what do you say to this observation, that we don’t need an Arbitration Act for there to be arbitrations? Obviously, whether or not this bill passes—and I suspect it will; I have no reason to believe that it won’t in terms of the Liberal control of the agenda. That’s number one. Obviously, there being no need for an Arbitration Act and this bill not forbidding arbitrations—and I say small-“a” arbitrations, which are historic and long-standing—from being conducted, how, then, does one address the reality that there will be arbitrations conducted by any number of people in any number of communities with full voluntary participation by the litigants before that arbitration, with coerced participation of the litigants by virtue of power imbalance, by virtue of the traditions and customs and standards, and that the people will comply with those arbitrations because it is consistent with their faith beliefs, even though the conclusions reached may well be contrary to what the vast majority of us regard as fair? I think you know exactly what I speak of. How, then, do we respond to that reality, which will persist?

**Mr. Fatah:** I’ll take “agent provocateur” as a compliment.

**Mr. Kormos:** As it was meant.

**Mr. Fatah:** We are cognizant of the fact that the fears you’ve raised are genuine, but we feel, one step at a time, that our community is already marginalized because of the obstacles it faces in integrating into this society. Historically, such marginalized communities have gone to their established institutions. In the absence of Muslim institutions that are secular, these groups of people, vulnerable people, have gravitated toward the clerics who would have received credibility, validation and authority over these communities.

The fears you’ve raised are genuine. Things will happen. We can’t eliminate all wrong things in society simply by passing laws. There are laws against murder; murders happen. There are laws against theft; theft happens. We can’t guarantee that as stakeholders. What we can do is that, by removing the validation that could



have come as a result of Marion Boyd's report, it's no longer there.

I can tell you that this debate did not take place in Ontario. It was on the front page of Pakistani newspapers when Marion Boyd's recommendation came out. I can tell you that a sister Legislative Assembly in the Republic of Dagestan used Marion Boyd's report to plead for polygamy over there. We know that in Lebanon these issues were raised, that in Egypt and in Saudi Arabia all Muslims who were fighting for equality, the ending of gender apartheid, were going to suffer a huge defeat across the Muslim world because these people were pointing out, "If it's good enough for a liberal, democratic parliamentary system in Canada, why is it not good enough for Iraq, where it is being introduced right now under the US administration?" Sharia has been introduced there.

Recognizing what you are saying, we as a small organization want to take baby steps. We've succeeded, and I hope that you co-operate and help to pass the law.

**Mr. Kormos:** Tarek, you're politically astute and skilled enough as a broadcaster. You know how to stay on message, and I understand that and I admire that. But, having said that, come on—you're a fundamental player in this debate—what do we do? What do all of us do to address the concern many of us might have about the fact that there are going to be arbitrations conducted and that people are going to be drawn into them for any number of good reasons? What are some of the real things we should be embracing to respond to that?

**Mr. Fatah:** The one thing that could happen in an ideal world would be to separate the Arbitration Act from the Family Law Act permanently. That would have been the ideal solution: that no family matters be directed toward arbitration. But, just like hospitals are being starved of cash and private clinics are being forced to open because hospitals are overloaded, we have now come to a situation where first we starve the judicial system of money and then we say, "Well, let's privatize the judicial system." So I can't, in my small organization, recommend what should be done.

In an ideal world, we would not be talking about tax cuts and we would be talking about funding the judiciary and hiring judges and crown prosecutors and creating more family law courts so there wouldn't be a backlog, so they wouldn't allow these stupid players who have no legal education, who have microphones in mosques and are telling people how to act, to suddenly become—they call themselves the court of judges, Darul Qada. It's a name they're taking on in Arabic that means "house of judges." They've even developed their own uniforms for when they come and preach.

If it were my government, I would have said, "Keep the Family Law Act and the Arbitration Act separate."

**Mr. Kormos:** Thank you, sir. Thank you, both of you gentlemen.

**The Chair:** The government side.

**Ms. Matthews:** Thank you very much. I appreciate the global perspective you bring to this debate. I also appreciate your leadership in bringing this issue to the

awareness of the people of Ontario. This debate has been emotional but it has also been intellectual. We've heard, and will continue to hear, over the hearings from many different perspectives.

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It seems to me that a point of departure between both sides of this debate hinges on a finding in Marion Boyd's report, and I'll just read it. Her report noted that "the review did not find any evidence to suggest that women are being systematically discriminated against as a result of arbitration of family law issues."

I think that was an important statement to make, and I think that is where groups have agreed or disagreed with it. I wonder if you could comment, from your perspective, on that statement.

**Mr. Fatah:** Having worked with Marion Boyd, I find it difficult to put this, but let me be very kind and say that she was not truthful. There was enough evidence in front of her, by one organization after another: women crying in front of her, men whose daughters have been abused by this system across the world, people like me who have endured imprisonment in our countries under so-called sharia courts. We told Marion Boyd that the person behind this law introduced sharia law in Pakistan under General Zia ul-Haq. He was the minister of religious affairs. Today he's a citizen of Canada. He was running the show from Brampton, attacking Western and Canadian society as essentially evil. We told her, "That's his name; these are the writings." She refused. She came with a preconceived notion. She is a wonderful woman who believes, naively, that we should all live together and get together. She does not realize that in 52 countries, people like me are suffering and fighting. We are believing, practising Muslims. In this month of hajj, I can tell you that I've done my hajj twice, and I've been called an apostate by people who think that these folks are some court of latter-day Sandinistas bringing justice. No. And she won't listen to us. We begged her to find out.

I can tell you that one of the proponents of this legislation said something on the death of John Lennon. Let me quote exactly what his words were: "Lennon's life was also a reflection of the Western civilization. This civilization too will die at the hands of the evil it has let loose on God's earth."

On John Lennon: "If he created bent and twisted minds with such lines in his songs as 'happiness is a warm gun' and 'thank you girl', then it is right that he should be one of the victims of his own creation."

What more evidence do the people of Ontario need to tell you that this has nothing to do with family law? People have threatened your Liberal colleagues on TVO, saying, "We warn you that we will defeat you because you as a Muslim supported this law." How can this happen? This is not about law; this is about politics.

**The Chair:** Mr. Runciman.

**Mr. Runciman:** I just want to add my thanks for your contribution today. Sitting on the sidelines, you are playing a very active role, and I'm impressed by what you've said today. Obviously, you have a better sense of



this than any of us in this room would. How widespread do you think the sentiment you've expressed here today is shared amongst the Muslim community in Ontario?

**Mr. Fatah:** It is very widespread. But when your team is under scrutiny and is losing everywhere, you're associated with underemployment and poverty, three of your countries are under occupation, people are beaten who have come forward and said this is a problem for us—walk in my shoes when websites are accusing us of being gay and lesbian simply because we oppose this oppression. I've been beaten up on Yonge Street, and I can't go to the courts or the police because they will say I'm a publicity hunter. I get an average of 10 e-mails a day saying that I'm the kuffar or an agent of Zionism or some Christian evangelical or a communist—you name it. Those labels have been given to us. There are people who have put a lot at risk. There's no one from our community in Holland or the United States or Britain or the Scandinavian countries who has taken this risk. The Canadian Council of Muslim Women has done an incredible job with courage and bravery. I wish Muslim men had the same courage.

I'm not debating the law—how you treat it, how you folks get around—but Ontario has set an example. I've never voted Liberal, but I admire Mr. McGuinty for showing courage and that he didn't succumb to a lot of pressure that came on him.

I tell my Jewish and Christian friends who talk about values that values have been interpreted over the last 1,000 years to inflict terrible pain on ordinary people. It was only after the American and French revolutions that we came to the consideration that all of us are equal irrespective of race and religion. We cannot have citizenship based on inherited rights and inherited races. NDPers, Liberals or Conservatives in this province, with all their differences, have a commonality in civic society where you debate; you don't threaten each other's lives.

Just as an ordinary citizen, I'm pleading that there has to be consensus. We cannot have multiple levels of citizenship.

**Mr. Runciman:** I appreciate your contribution. Very quickly, you and your organization are supportive of the legislation as it's currently structured? We've had other submissions from individuals and groups that share your view, but they are proposing a number of suggestions and amendments. But basically your organization is supportive of the legislation as it's currently written?

**Mr. Fatah:** We are part of the broad coalition that has taken the issue from a legal perspective and we support it. We are not qualified, nor do we have the resources; we are a voluntary organization. We know Islamic law very well; we know democracy very well. How folks work out the best solution is up to you. I'm supportive of the women's groups that come up. They know first-hand. I can't second-guess what the women's groups in Ontario have suggested.

**The Chair:** Thank you, gentlemen, for being here today.

## NO RELIGIOUS ARBITRATION COALITION

**The Chair:** Our last delegation before we break for lunch is the No Religious Arbitration Coalition. Thank you for being here today. Could you say your name and the organization you speak for? You'll have 30 minutes, and should you leave time, we'll be able to ask you questions.

**Dr. Janet Ritch:** Madam Chair, members of the committee and friends, it is my great privilege to address you today as the last speaker of the No Religious Arbitration Coalition.

My name is Janet Ritch. I teach undergraduates at York University and graduates in the Toronto School of Theology at the University of Toronto. I'm a practising Catholic by choice, and a woman, not so much by choice.

I will begin by stating my respect for both Premier Dalton McGuinty and Attorney General Michael Bryant and their staff for producing a complex piece of legislation which preserves the strengths of family law arbitration while restricting religious mediation to the realm of advice only. Those with faith in a just and merciful God are still free to bind themselves to whatever they believe is God's will. Hopefully, they are equally free not to be bound by what is not God's will. It is not a perfect world, nor is the judicial system perfect. But at least our Canadian laws respect the dignity and freedom of the individual conscience while trying to protect all citizens from each other, and even from themselves.

1220

Nevertheless, at the second reading of Bill 27, on November 23, which we all support as written, basically without change, the official opposition in the Ontario Legislature repeatedly complained that the Liberals arrived at their decision "without consultation," in a procedure which "shut out" or "rebuffed" certain groups, of which they mentioned only one organization, the Canadian Jewish Congress, who spoke earlier. Conversely, the same Conservative members of Parliament remarked that they had not heard a single complaint from the Christian community. They set that up in juxtaposition to the Muslim community, which was totally divided, and the Christian community was totally unanimous. That is what sparked my anger and to be here today, because that's unjust. The Christian community is no more united than the Muslim community. There are 28,000 denominations of Christians. Did you know that? It's incredible.

Since such remarks triggered these public hearings, I would like to address them. Homa Arjomand has already addressed the first issue of broad consultation, which gave rise to Bill 27. So I don't need to go through what everybody knows, that Marion Boyd was commissioned. She spent six months in consultations and she reported over a year ago in December. Section 4 of that report summarizes the consultations in 40 pages; that's the summary. Since her procedure was conscientious, consultative and transparent, it is difficult to imagine what could have been more democratic. Furthermore, her efforts have not been wasted, since the honest intention



behind her 46 recommendations is reflected in many provisions of Bill 27.

Her first recommendation, for example, that “arbitration continue to be an alternative dispute resolution option” for “family and inheritance law cases,” has been accepted, among others. Furthermore, Boyd’s firm belief in the importance of educating new immigrants to their rights under Canadian law will be put into practice. Personally, I think immigrant men should be educated as much as women.

Although a few justifiable checks have been made to balance Boyd’s recommendations within Canadian law, her work has been largely respected. Consequently, the democratic process that produced Bill 27 can hardly be called into question, and these public hearings are redundant and unnecessary.

Since the Conservatives are anxious to hear Christian opinion, I will remind them of the statement released by the Catholic Archdiocese of Toronto soon after Premier Dalton McGuinty made his announcement on September 11 of this year. According to this statement, “Roman Catholic marriage tribunals apply canon law internally and do not engage in the civil determination of matters such as custody of children, support payments, division of property, descent and inheritance, or any other matter which would be covered under the Ontario Arbitration Act.” Consequently, the Family Statute Law Amendment Act does not affect in any way the largest Christian denomination in Ontario, the Catholic church. Marion Boyd stated that very clearly in her report on page 39.

As a woman practising my faith within the Catholic church, I would also like to point out that when a female becomes disenchanted with the doctrine of the male hierarchy within this institution, she often feels that she has no recourse but to leave the church. Instead of expressing her dissatisfaction, she learns to suppress it or abandon her faith. Since these are rather negative options, they explain why few women within this tradition are organized enough and at liberty to express their discontent with the patriarchy in an official manner. Furthermore, I can see that my female Jewish friends are caught in the same negative trap in which their dissent is easily marginalized.

Our Muslim sisters are in some ways much more courageous. For this reason, I would like to take this opportunity to express my regret that they were ever subjected to such emotional turmoil here in Canada as that which occurred when the term “sharia” was introduced in this context. Perhaps the individual or institution which introduced the concept was hoping that we ignorant westerners would not notice the lack of equivalence between sharia and family law. The term’s significance is too big to be reduced to the narrow field of family law arbitration.

One great benefit that has arisen from that debate, however, has been the rising Canadian awareness of the true meaning of “Islam,” a word signifying “peace” in Arabic. It is all the more incumbent upon us in Canada to ensure that we are fully informed of the broad semantic

range of the foreign-loan words which we adopt into English, especially when the language is as complex as Arabic. While “sharia” is often translated as “path to the water,” another contentious word, “jihad,” which as you all know is now translated as “holy war,” could be translated by the Christian concept of “psychomachia,” which is a Greek word, “psyche” meaning “soul” and “machia” meaning “battle.” “Soul battle” is what “jihad” is in my interpretation. It’s a battle that every Christian with a free conscience engages in.

The prevailing Christian attitude, in the case of all the immigrants we are welcoming to Canada, should be that which Jesus selected from the Torah: “And if a stranger sojourns with you in your land, you shall not vex him. But the stranger who dwells with you shall be unto you as one born among you, and you shall love him as yourself.” I am aware that in the Jewish tradition the Torah is never read alone without commentary. It is quite obvious that this text too requires interpretation, since the stranger in it is clearly a man from a cultural context which did not allow the woman to exist independently. Yet some Christian fundamentalists read these words and other words in the Hebrew Bible literally—one reason we should not trust them to apply religious arbitration to family law.

Men have been the lawgivers, legislators and interpreters of the law since the Hammurabi code in Mesopotamia, in the 18th century before Jesus Christ ever lived. This code sanctified the most primitive law of all time, the law of retaliation—lex taliones—still all too operative today: “eye for eye and bone for bone,” as it goes in the Mesopotamian code.

One commentator of the Talmud argues that the Jewish version was progressive for its time, because the Judaic form of retaliation in kind, measure for measure, consistently upholds one standard law for all, which is after all the main objective of Bill 27: one law for all Ontarians. Christians ideally place mercy and forgiveness over retaliation. This means that even a feminist revenge for male abuses is unacceptable. Nevertheless, we must admit that the male bias still exists in law and politics, not just religion. Four thousand years of written law against less than one hundred years of female participation represents no small power imbalance.

Bill 27 walks a fine balance between the cancellation of binding religious arbitration and the continuation of ADR and family law—a perilous path, but a risk which must be assumed responsibly. Since the Liberal government has already proven itself to be responsible, it can be reasonably trusted to iron out the details of the proposed regulations in consultation with legal professionals.

While we are urging the government to proceed with the third and final reading of Bill 27 as soon as possible, there are some outstanding concerns that I would like to reiterate. We are focused upon reducing the risk of self-appointed arbitrators outside the public court system. People who are more conversant with the legal details have already spoken. I just hope that the records which the accredited arbitrators are required to keep are detailed



enough for proper scrutiny. I did think of something creative yesterday: Why doesn't the government do surprise audits of the arbitrators like you do when you're interested in our income tax? Are families less important than income tax? I would say they're more important.

Speaking of taxes, there is absolutely no excuse for failing to provide adequate funding for legal aid here and across the country. Stephen Harper asserts that Canada enjoys a surplus. Whoever forms the new government on January 23 owes the Canadian people the social services that we expect in return for our taxes. Legal aid is one of these services. Premier McGuinty will just have to keep fighting for the transfer payments which we are owed. We could use that surplus to bring both the public courts and the arbitration system up to standard and to make the justice system accessible to all women and mothers on reduced incomes.

1230

Secondly, our immigration laws continue to invite people from around the world who come here for refuge in hopes of a new and better life. Too often they are disappointed. If we are welcoming them here, we must provide them with the support services they require to make Canada their home, and we must be open to integrating them fully into the Canadian lifestyle.

I have just a few examples of what we could do better. First, we must ensure that qualified translators are competent to provide accurate translations in the public courts. A scandal in Peel region exposed by Casey Hill before Christmas, as reported by Christie Blatchford, suggests that this is not always the case.

Second, we need to sensitize lawyers and judges, not just arbitrators, to cultural practices which are imported from places like India, where the honour code still sometimes reduces a woman to the level of her husband's or her father's property. We've seen too many cases of men murdering even their own family members when that honour code has been abused, in their minds.

Third, an effort could be made to lessen the adversarial nature of the public courts and to shift the emphasis from being reactive to being more proactive in order to prevent disasters before they happen, like that of the child who was thrown on to Highway 401 in March of last year. The Family Court was responsible for that near tragedy, and I was expecting an inquiry.

I recognize that the legal community already has creative ways for dealing with ADR, including court-annexed ADR. I urge you to work co-operatively to reach a consensus between the legal community and all members of government as speedily as possible so that when the Legislature reopens, you can pass Bill 27 with as much enthusiasm as possible, and unanimously—Homa asked me to ask for that—and uphold Canadian laws, not just Canadian values, and then get on with the regulations.

I reiterate Alia Hogben's first recommendation in particular: It is vital to monitor and evaluate the implementation of the law. I will continue to monitor it from within the Christian community to be sure that you place

the common good of all Canadian men and women of any racial background, religion or colour above the self-interest of the established elite.

There are many paths to the water. Surely the path is less significant than the water, the source of all our lives, from which we come and to which we all return, whether we like it or not. This is a relatively new country with relatively little historical baggage. We must forge a new path together, walking a fine balance forward into history.

**The Chair:** Thank you. You've left just under five minutes for each party, beginning with the government. Mr. Zimmer? No. Ms. Matthews? Anybody on the government side with any questions or comments?

**Ms. Matthews:** I just want to say thank you very much for your thoughtful presentation. It's very much appreciated. I have no further questions.

**The Chair:** Mr. Runciman?

**Mr. Runciman:** No, none here. Thank you very much for your presentation.

**The Chair:** Mr. Kormos?

**Mr. Kormos:** Thank you very much, Ms. Ritch. You expressed concern about *lex talionis*, yet there are many legal historians who regard the Leviticus, embraced by Jewish peoples of that era, of *lex talionis* as not only progressive but the foundation of our concept of proportionality; in other words, that the punishment should not be disproportionate to the crime, be it in criminal matters—which is very much a hallmark of, presumably, a civilized criminal justice system, that the punishment should not be disproportionate to the crime—or in civil matters, that the judgment should not be disproportionate to the claim. In other words, there shouldn't be unjust enrichment.

I hear you, and I have no doubt that there are many sources for your observation, *lex talionis* in its most literal sense. As I said, what's interesting—and again, this is why the commentary is valuable. I don't know whether Mr. Zimmer shares this view or not, whether he read the same stuff I did over the course of the years. I've always regarded, based on the legal historians that I've read, that it's the underpinning of our modern western liberal justice system. I find your references to those sorts of things an incredibly valuable part of your presentation, because you engage us in a way that others wouldn't with the omission of those sorts of references.

Thank you very much. I appreciate your contribution to the debate.

**Dr. Ritch:** When you said that that brought in one law for all, I was referring to the fact that in Mesopotamia at the time there was slavery, so that if a slave lost part of their body, the value of the slave would go down. So the retaliation for the property, the slave, being damaged was different than for an aristocrat within the society.

**Mr. Kormos:** Look what we do to victims of workplace injuries in this country.

Thank you very much.

**The Chair:** Thank you very much for your delegation.

**Dr. Ritch:** Could I just clarify one thing?

**The Chair:** Sure.



**Dr. Ritch:** I am the least of the members of the coalition here; even though I'm being billed as the No Religious Arbitration Coalition, I'm just the Christian side of it. So please accept everything that they've stated before me, which was all the presentations here today, as really standing for the No Religious Arbitration Coalition, and me as an add-on.

**The Chair:** We appreciate your being here today.

Committee, we're scheduled now for a break before we begin our afternoon hearings. We are a little over the time, so in order to give everybody an hour, we are probably going to have to start a little bit late.

*Interjection.*

**The Chair:** Oh, we're starting at 2 o'clock. We're early. Sorry, I got my time wrong. So we'll be starting again at 2 o'clock.

*The committee recessed from 1239 to 1403.*

### ONTARIO ASSOCIATION OF INTERVAL AND TRANSITION HOUSES

**The Chair:** Good afternoon. The standing committee on general government is back from its recess, and we're here to continue public hearings on Bill 27, the Family Statute Law Amendment Act, 2006. Our first delegation this afternoon is the Ontario Association of Interval and Transition Houses. Could Eileen Morrow come forward.

**Mr. Kormos:** Chair, if I may, Philip Kaye, the legislative researcher, has drafted a couple of very good pieces of work for us, and I just wanted to thank him, on behalf of all the members of the committee, for his work in that regard and for getting it to us early. I appreciate that.

**The Chair:** And he showed initiative. He did it without being asked. Thank you very much. We appreciate that.

Could you say your name and the organization you speak for? You will have 30 minutes. I'll begin the time after you have introduced yourself. Should you leave time at the end, there will be an opportunity for us to ask questions.

**Ms. Eileen Morrow:** Thank you very much. My name is Eileen Morrow. I'm the coordinator of the Ontario Association of Interval and Transition Houses. My organization is a 75-member association of first-stage emergency shelters for abused women and their children across the province of Ontario. It's the largest women's shelter network in Canada. We were established in 1977, so we're coming up to our 30th anniversary, working on behalf of abused women and children who are exposed to woman abuse.

Today, I'll be speaking primarily to Arbitration Act changes and amendments, and the amendment to the Children's Law Reform Act. You have a copy of the brief we've provided to you. I'm not going to read it, obviously, but I'd like to just hit the high points, I hope.

I'd like to speak first of all about the Arbitration Act and how the amendments support women in abusive relationships, and to cite first of all that we are very pleased to be able to come here and support the intention of the changes to the Arbitration Act to restrict religious

arbitrations to advice only. We're very pleased that the government has listened to women's concerns across the province, because we feel this provision is important to protect the safety, equality and legal rights of women. In particular, our concerns would be for abused women and their children. We believe that the current wording and provision within the Arbitration Act, as it's proposed, does not disallow seeking advice from faith leaders, while at the same time ensuring that there is one law for all Ontarians, including women in the province of Ontario.

We're also pleased that the bill ensures that parties to an agreement must receive independent legal advice before making an arbitration agreement. It is important for abused women and children that they receive information on their legal rights, as mediators of all kinds are focused on achieving agreement, not necessarily legal fairness. This has been a problem for abused women and their children in the past, and continues to be.

We also support the inclusion of a statement that a party's failure to object to any irregularity in the arbitration or mediation will not be considered a waiver of the right to object later. This is critical to abused women and their children, because often women who are in abusive situations feel pressured into mediation by everyone in the system, including systems like legal aid, and only later do they realize that the agreement they have made is actually not legally fair. Then they're in a situation where they are accused of signing something. You know: They've made the agreement and they have to stick by it, even if it's not safe or supportive to the well-being of their children, who are exposed to woman abuse.

We do, however, have some concerns about the amendments to the Arbitration Act and would like to speak a little bit about how the amendments make it harder for women in abusive situations. We're actually troubled that the government has taken the opportunity, when making amendments to restrict arbitration to Ontario law, to also decide to codify and enshrine mediation in the law of Ontario.

Advocates who work with women in violent relationships have opposed the growth of family mediation for a long time, because women are often not in equal bargaining positions with their partner and often feel pressured to enter mediation. They're often given inaccurate information to encourage them to participate; for example, that mediation is cheaper, that it's less adversarial, that it's better for their children. They may even believe that the mediator can change their abusive partner's behaviour. These myths are dangerous to women in abusive situations. We believe the enshrinement of family mediation in Ontario law will enhance the credibility and use of family mediation, and so we worry that it will also enhance the jeopardy of women in abusive situations as a result.

There are a number of factors that concern us about mediation. Mediation and arbitration require relatively equal bargaining power between parties, which the women whom we work with almost never have. The actual definition of an abusive relationship is a power



imbalance. So it's not just in the mediation or during the divorce; it's an encapsulation of the entire relationship in the past, present and future.

Many mediators are not educated about intersecting equality issues or the role of the family in perpetuating power imbalances between women and men and other power imbalances like racism, homophobia and discrimination against women with disabilities.

Mediators often do not and cannot identify tactics of intimidation or coercion. So they look to things like physical violence or outright insults, but they don't see the look on his face, the way he moves his head, the way he pushes his chair back. These things are signals to women in mediation.

In addition, mediators cannot make women safe by having in place safeguards like shuttle mediation or things like that, because the intimidation exists in the world, not just in that room or after they leave the room.

Mediation in family law promotes the creation of a private agreement rather than a public judgment based on legal fairness and rights. Women in abusive situations have seen far too much private justice, thank you very much. They don't need any more.

Mediators engage in negotiation, a concept that is alien to abusive, manipulative and controlling partners. Family mediators often promote shared parenting, an arrangement that has not been proven in the best interests of children and, in particular, is dangerous for children who have been exposed to violence against their mothers.

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Mediators often promote a focus on the future and discourage the parties from discussing the past. For women in abusive situations, this is clearly unfair, as the best predictor of future behaviour is past behaviour. Mediators focus on achieving agreement, as I said, not fairness or equality. Women in abusive situations often feel they need to trade off their equality and legal rights in order to be safe or to protect their children.

So if the government continues to follow the path of codifying the practice of family mediation under the Arbitration Act and the Family Law Act, the regulations and legislation should be strengthened and monitored to ensure that women in vulnerable situations do not lose their rights to safety, security and equality under the same Ontario and Canadian laws that the act seeks to uphold.

We therefore recommend that a clause be added to the legislation per se that requires anyone engaged in any form of family law mediation to immediately screen out and refer to independent legal counsel and women's community advocates any cases in which they identify abuse, violence or power imbalances based on any of the equality provisions under section 7, the right to life, liberty and personal security, and section 15, the equality clause of the Charter of Rights and Freedoms.

Mediators and arbitrators should be required to receive ongoing education on issues of equality based on sections 7 and 15 of the charter. Ongoing monitoring of arbitra-

tions and mediations is needed, and comprehensive record-keeping, to ensure accountability to these rights.

There has been no consultation on the codifying of mediation in this bill, so I think we seriously need to monitor this for women who are vulnerable in all communities in Ontario. Legal aid funding must be increased to ensure that parties streamed into arbitration and mediation have the resources to seek independent legal advice comparable to parties within the family law system to support them through the mediation process. The act should specifically state that without proof of independent legal advice, an arbitrated agreement is of no effect.

Resources should be provided to ensure that all women and children have access to supports that would facilitate their equal access to justice in the family law system, including cultural and language interpretation, accommodation for parties with disabilities, and advocacy support from community-based services where that is applicable. The bill should be amended to include a clause requiring evaluation and review of the sections of the act applicable to family law matters in their entirety at least three years after the debate and the amendments are proclaimed, again, because there are some serious implications of the codification and the changes in this act.

I'd like to turn now to the Children's Law Reform Act and talk about that just briefly. How does the amendment support women in abusive situations and children who are exposed to violence against women? We believe that this is a very positive step forward and long overdue within family law, and we'd like to thank the Ministry of the Attorney General for taking this step to better protect women and children who experience the challenges of escaping an abusive situation. The failure of courts to consider abuse against not only children but their mothers has resulted in some Family Court custody and access decisions that have had tragic outcomes, including the deaths of children and their mothers. Courts have often made the misguided assumption that abuse and violence against women will stop when couples separate and that separation alone will protect children from exposure to abuse. This is absolutely untrue.

This amendment also honours at least one of the recommendations of two coroners' inquests into the murders of abused women in Ontario—the Arlene May inquest and the Gillian Hadley inquest—both of which recommended, among other things, the consideration of domestic violence in family law custody and access decisions.

The amendment to the Children's Law Reform Act proposed in Bill 27 will go a long way to ensuring that lawyers will be able to raise issues of abuse without fear that courts will dismiss them or see them as irrelevant to the well-being of children in custody and access decisions. We've heard this from lawyers who have tried to support abused women in Family Court.

We're particularly pleased that the amendment mentions both abuse and violence, as many courts assume that non-criminal acts of abuse are safer than those of



physical or criminal violence. They could not be more wrong in this. In both of the inquests into the deaths of Arlene May and Gillian Hadley there was very little physical violence, but a lot of criminal harassment and non-physical violence that led to these women's deaths and threats against their children.

Although there are additional amendments that could and should be included in the best-interests-of-the-child test, especially the history of primary caregiving of the child, for example, we are pleased to support this current amendment and urge the opposition parties to support the government to ensure its passage.

We also fully support the intention of the government to repeal old sections of the Children's Law Reform Act that were adopted but not proclaimed in 1989, and we also urge opposition parties to support these changes as recommended.

Finally, I would just like to say that while we recognize the problems of supporting processes and practices that do not conform to the Ontario law and we support the amendment to the Arbitration Act in that sense, we also recognize the shortcomings of that same family law that we support for women and children, and particularly for aboriginal women, racialized and immigrant women, women with disabilities and poor women in Ontario. We strongly urge the province to move as quickly as it has moved on this legislation to remedy all of the current imperfections in the formal family law system, including within legislation governing family law matters. In doing so, it will have the contribution, expertise and support of women's advocates and violence survivors for any progressive changes it proposes.

Thank you very much. I'm done.

**The Chair:** Thank you. You've got just a little over five minutes for each party, beginning with Mr. Runciman. Did you have a question?

**Mr. Runciman:** I don't have a lot of questions. You referenced the Children's Law Reform Act. This issue was raised earlier today, and the issue of gender neutrality. Do you share those concerns? I don't know if you were here for that earlier submission.

**Ms. Morrow:** I'm sorry?

**Mr. Runciman:** Gender neutrality: They're concerned that perhaps the legislation should be stronger with respect to that issue.

**Ms. Morrow:** Yes. I believe it should be stronger with respect to that issue. I believe that, by and large, what we're talking about here is women abuse, and we're also talking about a situation in the family in which women are still the primary caregivers of children. Even when courts order joint custody, for example, women end up being the custodial caregiver of the children. I believe that as long as that is happening, we need to recognize and support women who are attempting to carry on the care of these children and to protect them. Because it's not a gender-neutral condition in our communities, I think we really need to recognize the imbalance. We're not talking about same-same here. Even when we're

talking about violence, we're not talking about the same situation.

I don't have time to go into the intricacies of it but I'd be happy to speak to you at another time about why it's just not the same, including the fact that after marriage dissolution women become poorer, they remain the caregivers of the children regardless of the court order and they remain in danger. You can't flip it. The power imbalance doesn't flip the other way.

**Mr. Runciman:** Are you familiar with the Quebec jurisdiction in this regard? I'm not, really. I raised it just out of a very cursory understanding, but apparently there is no provision for this kind of mediation in Quebec. Is that correct?

**Ms. Morrow:** I'm not a lawyer, and to be honest, if I start speaking about the legal processes in Quebec, I'm going to get into trouble.

**Mr. Runciman:** We tend to be supportive of the intent of the legislation. I guess my only concern is that while this seems to be and it could be simply, in response to you, a resource issue, when you start taking a look at the current backlogs in Family Courts, the opportunity for appeal, all of the complications that grow out of this, do you have any concerns?

**Ms. Morrow:** I guess the question back to you would be, has the government costed out providing independent legal counsel to everyone in mediation under this bill? Has it costed out monitoring the enshrinement of the codification of mediators? Has it costed out training the mediators on an ongoing basis? Has it costed out the administration of the record-keeping and reporting of mediators? If that's costed out, mediation, especially if it doesn't work, doesn't necessarily cost less.

1420

**Mr. Runciman:** They're great questions. We'll await the responses from the government.

**Mr. Kormos:** Thank you, Ms. Morrow. Those are important observations. You might be interested to know that the bill currently before the House amending the Child and Family Services Act actually institutionalizes mediation in child protection cases, which I find a pretty frightening proposition in view of the subject matter that's being dealt with.

**Ms. Morrow:** I have bigger concerns about the child welfare legislation.

**Mr. Kormos:** So here we are. To be fair to the government—and people will rush to correct me if I'm wrong—the bill only deals with mediators in passing in terms of the Child and Family Services Act. There's not a whole lot of regulation—there's no regulation. I'm going to be asking people from that community how they feel about being added to the list of mediators and arbitrators.

I know the kind of work that you, your member organizations, their staff and their volunteers do. I've been in those Family Courts, in the provincial court, family division—I don't know what you call it now—where people are lined up in hallways, where women who have been abused are sitting six feet away from their abusers. They're all scrunched together in the same



space. They sit and wait and wait. Family court judges have dockets three and four pages long. The staff have been there for eight, nine or 10 hours. People finally get into the courtroom, and the judge says, "Look, we've got to adjourn your case for three more weeks because we just can't deal with it today." That's incredibly dangerous, in my view, and frustrating, amongst other things. There's certainly no justice in it for the litigant, for the woman who's fighting custody issues and seeking some modest support etc.

How is arbitration going to help the bulk of those women? You talk about financing the independent legal advice. Let's face it: If people can afford \$2,000 or \$2,500 a day for a private arbitrator, if people can afford to rent the facilities, if people can afford the court reporter who might have to be hired to make a transcript in case they want to appeal it, they're not likely to be eligible for legal aid anyway. My concern is that this does nothing to address the real problem out there of Family Courts that simply don't have the capacity to deal with the backlog. What do you say to that? A whole lot of the folks we know in shelters do not have the resources to even entertain private arbitration. They've got to use the provincial court, family division.

**Ms. Morrow:** I don't think that the Arbitration Act or the enshrinement and codification of mediation or mediation as it stands right now—unregulated, unsupervised and freely reigning around the province—really does solve the problems of the family law issues. The family law issues are still there. They're still endangering women and they're tearing women apart. Abusive men are very familiar with the family law system, how to abuse it and how to abuse the legal aid system in order to maintain control of the women and children they have in their control when they're in the relationship. It's one of their primary systems for going after women after the relationship has ended and the couple has separated. They use custody and access—in particular, access—as their primary weapon.

That's a family law issue as well as an arbitration and mediation issue if the mediators and arbitrators are going to be making those kinds of agreements.

**Mr. Kormos:** I don't know if you share my understanding that even in arbitration, people retain counsel; people get lawyers to represent them in front of the arbitrator.

**Ms. Morrow:** Not necessarily. Anybody can hang out a sign that says, "I'm a mediator and I can balance the power and I can keep you safe."

**Mr. Kormos:** I'm talking about arbitrators.

**Ms. Morrow:** Arbitrators—oh, you mean like lawyers' mediation and that kind of thing.

**Mr. Kormos:** No. Arbitrators; the private judges.

**Ms. Morrow:** Like religious arbitrators?

**Mr. Kormos:** No. Private judges, like any of the dispute resolution services downtown here: a lot of retired, very capable, very competent people.

**Ms. Morrow:** Yes. Then they would have lawyers involved.

**Mr. Kormos:** With the same cost as in the public court system in terms of lawyers.

**Ms. Morrow:** If the public is paying for it, yes.

**Mr. Kormos:** In terms of legal aid, one of the things my office is being confronted with on a regular basis is that even if you get a certificate, you're hard pressed to find a lawyer. Most family lawyers won't take on a case because of the cap on the certificate. They simply can't do justice to that client.

**Ms. Morrow:** That's an issue for family law as well. It's an issue in court as well.

**Mr. Kormos:** Yes. Quite right.

**Ms. Morrow:** Many, many more people are representing themselves.

**Mr. Kormos:** Shouldn't we really be discussing some of those things?

**Ms. Morrow:** I think we should be discussing some of those things. I think there are a whole lot of things we should be discussing around family law and the legal aid system. I hope the province of Ontario moves on to discussing all the things that—

**Mr. Kormos:** Mr. Zimmer is the parliamentary assistant to the Attorney General. He has the ear of the government. He's the person to tell that to.

Thank you, ma'am.

**Ms. Morrow:** You're welcome.

**The Chair:** From the government, Ms. Matthews.

**Ms. Matthews:** Thank you very much for coming today. I really appreciate your perspective. I know your organization, and I know you do excellent work with women and children who are at the most difficult moment of their lives. I really appreciate the work you do and the fact that you took time away from that to come and comment on this legislation.

I know the discussion has gone beyond this legislation. We've talked about other challenges that we face, but to refocus on your presentation, I want to thank you for bringing up the amendment to the Children's Law Reform Act, because we haven't heard a lot about that. I just wonder if you have anything you want to add about why this change will strengthen the arsenal against domestic violence in Ontario.

**Ms. Morrow:** I think it's really critical. If I were to choose one amendment—I wouldn't choose one amendment, by the way, but if I were going to have to choose one, this would be the one, because abusive partners use custody and access to maintain control and power over their partners, and it's often tragic for women and children. We've seen that in the past. Children have died in these situations on access visits. In fact, Helen Keric and all four of her children were murdered on an access visit some years ago.

This is not a fantasy; it's a nightmare for women, so it's very important that judges be required to consider it. To be honest, there are not a lot of people who truly understand how dangerous this can be for children. They believe, when they're making a decision in the best interests of children, that it really doesn't matter what the relationship is like between the parents of the child. They



have, I think, kind of wishful thinking. They believe that if the parties just separate, there will be no more violence. I know they believe this, because they think that both parties are involved in this violence, that it's some kind of argument gone out of control, that these people just don't get along, and if you separate them, everything will be fine and the kids will be fine. That's actually not what's going on in an abusive relationship.

Abusers often in fact intensify the violence after the woman leaves, because control is gone. It's when women either decide to leave or have left that you see murder happen and the killing of whole families. To allow that kind of destructive belief system to go on in the Family Court and be freely used by abusers—freely using our public system to continue that kind of behaviour—is scandalous. We've been working on these issues for 30 years, and we're still having judges refuse to take this into consideration, even though we have Dr. So-and-so and Dr. So-and-so and Dr. So-and-so testifying. There's research; there are all kinds of proof.

We need a direction. We need to give direction here. We need to take leadership and give the courts direction that they must consider this in the best interests of the child. If they're to do that, the two most important things in the best interests of the child are the level of poverty the child experiences and the well-being of the primary caregiver, who is almost always the mother regardless of the court order. Shared parenting notwithstanding, it's the mother who ends up taking care of the kids.

If those two things affect the children and the well-being of the children the most, why aren't we considering those things in the best interests test? I would say it's critical to protecting children and, in particular, it's critical for protecting them from exposure to violence against their mothers. I think it's illogical to assume that they will never be exposed to any abuse against their mothers if fathers are given access or, for that matter, custody—so for sure, joint custody.

**The Chair:** Thank you for your delegation today. We appreciate your being here.

**Ms. Morrow:** Thank you very much for the opportunity.

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#### ONTARIO BAR ASSOCIATION

**The Chair:** Our next delegation is the Ontario Bar Association. Good afternoon and welcome. Will you all be speaking this afternoon? As you begin, could you introduce yourselves and the group you're speaking for? Once you've introduced yourselves, you can begin. You have 30 minutes. Should you leave time at the end, there will be an opportunity for us to comment or ask questions about your delegation.

**Ms. Kelly Jordan:** I'm Kelly Jordan, chair of the family law executive of the Ontario Bar Association. I'm here with two of my colleagues: Hilary Linton, vice-chair of the alternative dispute resolution section of the bar association, and Maryellen Symons, a member of the

executive of the feminist legal analysis section of the bar association.

Together, we're here to present the position of the bar association, which is a branch of the Canadian Bar Association. The Ontario Bar Association, or OBA, is the largest voluntary legal association in Ontario, representing 16,000 members, including lawyers, judges, law professors and law students. It was founded in 1907.

The OBA supports the policy considerations that underlie Bill 27; namely, the protection of vulnerable parties in family law arbitrations, who are primarily women. We support the principle that family law arbitration should be conducted in accordance with Ontario/Canadian law. Arbitrations in family law are an important choice available to separating couples to resolve their disputes. Family arbitration is voluntarily chosen by many people who are unable to resolve their own conflicts. It is affordable, accessible, confidential and generally less adversarial than the court system. It can offer vulnerable women and men a sane way to end a very serious conflict, which ultimately benefits children who need the conflict between their parents to end.

The choice of arbitration has been recognized as an important one by family law judges. In a recent Ontario case, the presiding judge was asked to enforce a private arbitration award, and he stated, "In recent years, alternative dispute resolution has become an important part of the system of family law in Ontario. The courts are overburdened and when parties attempt to resolve their issues privately some of this burden is relieved."

The importance of ADR has also been recognized by scholars who work in the area. Robert Nelson, the author of *Nelson on ADR*, published by Carswell, has stated, "I strongly support the use of mediation or arbitration in family law matters. I can see a great benefit to using a confidential process to resolve some of the thorny issues facing a family in crisis—such as maintenance, division of property, etc."

Bill 27 offers important safeguards to vulnerable parties who choose this method of conflict resolution. We support those provisions, including the requirement that parties who choose arbitration do so after obtaining independent legal advice. We also support the amendments contained in the bill with respect to the Children's Law Reform Act, including the direction that courts consider domestic violence in assessing one's capacity to parent.

The OBA, however, does have some serious concerns with four main aspects of the bill that are more process in nature. I'm going to address the first of these issues and then ask my colleagues to address the remainder.

The issue I'm addressing is what we view as most critical, and that concerns the absence of a quick enforcement mechanism for arbitration awards in the bill. This issue is going to be canvassed at some length by Mr. Thomas Bastedo, a senior family practitioner, later this afternoon, and so if we can't get to all of your questions on this issue, I think you'll have an opportunity to speak to him about it in more detail.



Under the Arbitration Act currently, arbitration awards can be enforced by the parties under section 50, which requires a court to “give judgment” enforcing an award with very few exceptions. To give you a specific example, if you went to arbitration and obtained an award for the payment of money—for example, for the payment of \$100,000 to settle your property dispute—and your spouse refused to pay you that money, you could go to court under section 50 and have the court make an order on the same terms as the arbitrator did in his or her award. In our example, that would mean you could go to court and quite quickly garnish your spouse’s wages or force the sale of his or her property in order to secure your award.

Bill 27 exempts section 50 of the Arbitration Act from family arbitrations, and instead says that arbitration awards should be enforced not by court order but as domestic contracts under the Family Law Act. This is particularly problematic. Domestic contracts, like separation agreements, aren’t automatically enforceable. They are contracts between two parties, and when one party contravenes a provision of a separation agreement, the remedy is for the other party to sue on the basis that the contract has been breached. In the example I was using where your spouse owes you \$100,000, you would have to sue in the courts, on the basis that your spouse contravened the domestic contract, for the payment of the \$100,000. This would entail starting a court action and essentially re-litigating the issues that were the same subject of the arbitration that led to the award.

This, in our view, is contrary to the goals of finality and cost-efficiency that are central to family law arbitrations in Ontario presently. Enforcement is critical, particularly to the more vulnerable party, who generally has less resources to pursue enforcement. The OBA therefore recommends that the bill be amended to allow family arbitration awards to be enforced under section 50 of the act.

I’ll now ask Hilary Linton to address part 2.

**Ms. Hilary Linton:** I’m going to talk about a couple of other sections of the bill that are causing us a lot of concern. Before I do that, though, I just want to clarify the profound difference between mediation and arbitration. I was listening to some discussion previously about mediation. This bill, of course, is not about mediation. Mediation is an entirely different process. We are dealing here with a process involving the decision-making capabilities of an arbitrator, not the facilitation role of a mediator. I won’t say anything more about that, but I just thought it was important to emphasize that the distinction is real.

I’m going to ask you to take a look at clause 1(11)(c) of Bill 27, which stipulates the ability of the Lieutenant Governor in Council to make regulations. In particular, I’m addressing proposed clause 58(e). This regulation would require arbitrators to meet with parties separately as part of the arbitration process. This process is known as screening in family mediation—screening for power imbalances, violence and abuse. In mediation practice, of

course, such screening is essential to ensure a fair, balanced and safe mediation process.

However, it is very inappropriate to require arbitrators to conduct this kind of screening. The goal behind this regulation is laudable. It’s very important that arbitration be voluntary and very important that the process of arbitration be safe for parties, and we support these goals. I want to emphasize that we also support the requirement that arbitrators receive training in the dynamics of violence and power and abuse, because that’s important information for arbitrators to understand in order to manage the arbitration properly and to apply the law properly. However, it is not appropriate to ask an arbitrator, who is a neutral, impartial decision-maker, to meet privately with a party and, in essence, take evidence from that person on matters that may be relevant to the issues in dispute in the arbitration. That’s what you do in a screening process: You meet with parties privately and ask them a lot of questions about the dynamics of their relationship, about violence, about abuse, about facts that may well be evidence. To ask an arbitrator to do this is to put an arbitrator in an untenable position as a professional arbitrator. It violates the requirements of due process, fairness and procedural justice that are the hallmarks of the Arbitration Act.

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Therefore, the OBA is recommending that the legislation be amended to require that not the arbitrator but the lawyer who is providing the independent legal advice have the responsibility for this important function. It is the responsibility of the lawyer who is advising the parties prior to arbitration to ensure that the parties are attending arbitration voluntarily, to ensure they understand the implications of this agreement and to negotiate a fair and safe arbitration process if the screening indicates that there are any safety concerns. In our experience, it is entirely possible that victims of violence will want to proceed with an ADR process such as arbitration, and it will be the responsibility of the arbitrator then to put into place the kinds of safety plans a mediator would put in place when the screening indicates evidence of violence in the relationship.

The role of the lawyer providing independent legal advice would be to assist in structuring an arbitration process that’s safe; or alternatively, if the screening indicates that the person’s participation in arbitration is not voluntary, then the gatekeeper will be the lawyer providing independent legal advice, and this person then will advise the party to not participate in arbitration if it’s not a voluntary choice.

Second, I’d like to talk about one of the proposed amendments to the Family Law Act which is set out in subsection 5(6) of Bill 27. This subsection turns the agreement the parties enter into at the outset of the process, the agreement to arbitrate, into a domestic contract. This, in turn, gives the parties a new remedy for setting aside that agreement if it doesn’t comply with the requirements of section 56 of the Family Law Act. It also provides the parties with a new means of setting aside an



award at the end of the arbitration process if they can show that the agreement to arbitrate at the beginning of the process did not comply with the requirements of section 56. Fundamentally we support this, particularly the provisions in clauses 56(4)(b) and (c), which set out that the agreement to arbitrate can be set aside, for instance, “if a party did not understand the nature or consequences” of the arbitration agreement or “otherwise in accordance with the law of contract,” and that’s all good. It’s the first part that we’re concerned about: 56(4)(a). This section would require parties to exchange financial disclosure, which is in practice exhaustive financial disclosure just to enter the arbitration process, even if the issues that are being arbitrated are not financial issues and are not issues on which you would normally exchange that kind of financial disclosure. So it’s an added burden, an unnecessary cost to the parties, to require them to undergo that procedural step when they’re entering into an arbitration process.

Our recommendation is that family arbitration agreements be considered to be domestic contracts but that they be exempted from the requirement of clause 56(4)(a) of the Family Law Act that deals with the exchange of financial disclosure or that allows a party to set aside a domestic contract for inadequate financial disclosure or for failure to disclose substantial assets and liabilities. That should not apply to family arbitration agreements. Second, we support the notion, though, that family arbitration awards should be capable of being set aside if that kind of financial disclosure was not made in the arbitration process. Those are the two recommendations that we’re making with respect to subsection 5(6), amending the Family Law Act.

The final point I want to touch on is subsection 5(10) of Bill 27. This is the section that adds the new definition of “secondary arbitration.” This is a real concern for us. We feel that there may be potentially a very serious problem with the draft legislation in the definition of “secondary arbitration.” Secondary arbitration, and I’m thinking particularly of mediation-arbitration, what’s known as med-arb, is a very common process for parties to incorporate into their separation agreements as a means of resolving future disputes arising out of the separation agreement. It’s a widespread practice, and for good reason. Parties who go through the purpose of negotiating a separation agreement get full, independent legal advice, then want a manageable and affordable mechanism for resolving future disputes—not just managing the ongoing administrative aspects of the agreement but actually determining future disputes that may arise between the parties. I believe that speakers following us will be touching on this important issue as well.

Because it’s so cost-effective for parties to agree to this process in their separation agreements, our concern is putting additional obstacles in the place of parties who want an effective way of resolving future disputes. Our concern is that the current wording is too narrow. First of all, it could lead to a lot of litigation, but second, it could put parties in the position where they have to go and get

further ILA on the agreement to arbitrate the secondary dispute. In many cases, they may arbitrate several times secondary disputes after their separation agreement has been executed. In each case, are they going to be required to obtain independent legal advice just to enter that arbitration process, when they’ve already done it in the context of negotiating their separation agreement? So, although we understand the objective behind this provision of the legislation, and we do support the notion that parties not be bound by arbitration clauses in marriage contracts, we query whether the standard should be different when you’re talking about arbitration clauses in separation agreements.

Thank you. Those are my comments.

**Ms. Maryellen Symons:** I’m Ms. Maryellen Symons. I’m going to take up the last issue in the concerns we would like to raise with you.

After a great deal of careful consideration and discussion, the three sections of the Ontario Bar Association that are most concerned with the effects and implications of Bill 27 are largely in consensus. But there are some concerns on which we were not able to reach consensus, and they relate to whether parties to family arbitration should be able to contract out of the limited right of appeal. Section 45 of the Arbitration Act provides a right of appeal on a question of law alone, with leave of the court, which is quite restrictive, and the grounds for getting leave are quite restrictive. We still are not in full agreement. We still have some concerns about whether parties should be able to opt out of that limited right of appeal and we’d like to present those concerns for your consideration.

The family law and alternative dispute resolution sections believe that prohibiting parties from contracting out of the right of appeal would take away a significant benefit of family arbitration. This benefit is finality, which in their view is often more valuable to the more vulnerable party. Their concern is that an abusive or overbearing spouse could prolong the dispute through further negotiation and litigation if the right of appeal is maintained for all arbitrating parties. Final and binding arbitration may be the only way to end the dispute and terminate a disadvantageous or dysfunctional relationship. Moreover, the costs of arbitration could increase if transcripts are required for possible future appeals.

Family and ADR would recommend that the right to appeal remain a negotiable item in family arbitration agreements.

The feminist legal analysis section believes that family law involves public policy aspects which make it desirable for family arbitration awards to be subject to scrutiny. They point out that section 46 of the Arbitration Act, which provides for setting aside an arbitration award under, again, very limited specified conditions, does not provide a remedy for an award that wrongly applies the law. If the arbitrator messes up on the law, section 46 does not provide a remedy for that.

They also think that the finality of an unappealable award can be as valuable to a domineering and abusive



spouse as to a vulnerable spouse. Bill 27 adds significant protections for vulnerable spouses, which should lessen the concern about continued abuse through litigation.

Therefore, the feminist legal analysis section would recommend that the right of appeal be preserved in family arbitrations.

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All three concerned sections of the bar association support Barbara Landau's recommendation, which you will hear about later, that lawyers who provide independent legal advice to parties contemplating family arbitration should be required to certify that they have explained the appeal rights and the consequences of waiving them. We concur in urging you to give careful attention to her submission that parties should be able to waive appeal rights when the arbitrator is a Canadian lawyer or retired Canadian judge, but not otherwise.

We also recommend that the full range of appeal options should be set out in standard family arbitration agreements. At present, many standard agreements to arbitrate family disputes simply have a clause contracting out of appeal rights—that's the standard default clause in the agreement—and this makes contracting out the default position and militates against a freely negotiated choice. We think that whatever the Legislature decides to do about appeal rights, the full range of choices—limited appeal, full appeal, no appeal or whatever—should be there in the standard agreement for the parties to choose from.

Thank you. Those are our submissions.

**The Chair:** You've left about three minutes for every party to ask you questions, beginning with Mr. Kormos.

**Mr. Kormos:** Thank you kindly. Where are the defenders of arbitration?

*Interjection.*

**Mr. Kormos:** Bless you.

Look, you're right: Arbitration is cheaper because the parties can design their own process. They can make an abbreviated process. They can dispense with evidentiary rules that are cumbersome. They can design it to meet their particular needs. It's private, which means no state intervention either; no state scrutiny.

I just gave Mr. Zimmer the Hansard from back in 1991, when Howard Hampton introduced the Arbitration Act for first reading, the Uniform Arbitration Act, which was lauded by everybody and subsequently by judges. The Liberals were gushing with praise after first reading of the bill. Greg Sorbara, the Liberal responding to Howard Hampton, said, "Thank goodness you've introduced this, Mr. Hampton. It's the work that Ian Scott, the Attorney General, had been doing for some good chunk of time now."

My view is that the government has created something that's neither fish nor fowl. They say it's arbitration, but it lacks some of the fundamental qualities of arbitration. It seems to me, and I may be alone on this, that they're creating a private, government-regulated court system for family law. Is it still arbitration when the government regulates arbitrators, when the government tells you what

law to utilize, when the government tells you what procedural course to take? Is it still arbitration?

**Ms. Jordan:** We've given it careful consideration because it does change the conduct of family law arbitrations fairly significantly and it will change our practice on a day-to-day basis as family lawyers. But we think that the underlying policy consideration of the bill in protecting vulnerable parties is an important one, and that the bill, for the most part, subject to those four main areas we brought up, achieves the correct balance between protecting vulnerable parties in family arbitration, which is different from other civil arbitration, and also giving parties the choice for arbitration.

I think you brought up Quebec, or I can't remember if Mr. Runciman did. My understanding is that Quebec didn't have a history of arbitration prior to these issues coming to the fore but they have now passed legislation that would say that there can be no family arbitration.

**Mr. Kormos:** The Quebec civil code clearly states that family matters and probate matters are exempt from arbitration.

**Ms. Jordan:** Right. There weren't significant arbitrations prior to that, so it really only codified the existence, but we wouldn't want to see that in Ontario. We think arbitrations are a very valuable choice for family law.

**Mr. Kormos:** What if commercial arbitration is next on the government's hit list?

**Ms. Symons:** I don't think that's a realistic fear because, looking at society, there still are systemic power imbalances between women and men. Women have made a great deal of progress but there still are systemic power imbalances, and those systemic power imbalances do frequently become very live in matrimonial relationships. Although I agree with my colleagues about the value of arbitration, otherwise I would not be here, I think the reason for the government's initiative to provide some protections for parties in family arbitrations is that here you have a situation where historic, pervasive, systemic inequalities and power imbalances still are in play. They present a situation where you're going to have more of a risk of a vulnerable party being harmed in a process. That happens in court processes too, but we have more of a danger of a vulnerable party being harmed in a process if the process is not adjusted to face those realities.

**The Chair:** Thank you. Mr. Zimmer.

**Mr. Zimmer:** A question on this issue where the arbitrator screens for the power imbalances: In your model or your amendment, you'd like to see that rest with the lawyer representing the party. My question is, if that were the case—it resting with the lawyer, not the arbitrator—what are the protections for the woman in this case to protect against incompetence of the lawyer, a conflict of interest that the lawyer may have? Perhaps the lawyer that she has engaged was referred to her by the other party to the arbitration—the husband, if you will—or is just a lawyer who doesn't practise a lot in that area and, while not incompetent, is just not up to snuff on the issue. How would you protect there?



**Ms. Linton:** It's a good question, which we have thought about. The whole field of independent legal advice is a rather well-developed one in family law. The proposal—I believe Barb Landau will be speaking to this to some degree—includes a fair amount of training for family lawyers who are providing this independent legal advice in the dynamics of violence and abuse. The same kind of training that we as mediators take, we are recommending that the family lawyers also be required to take, and that they certify that on the certificate.

Beyond that, it's the same protection that anybody has who goes to counsel for independent legal advice and receives incompetent ILA. There are remedies for that in law.

**Mr. Zimmer:** Just a follow-up on that: Do you not think that a party to an arbitration—a woman, in this case—might feel a little more confident or be open in her complaints or her story being able to speak privately to the arbitrator on this issue, rather than going through the lawyer, who will try and capture her concerns and then articulate them in a more public forum at the arbitration board?

**Ms. Linton:** There are two pieces to this. One is, what are the criteria for entering arbitration? The next one is, what is the arbitration process going to look like? When you go to a lawyer for independent legal advice and the lawyer screens, that's a very exhaustive process. That's the place where a woman will be comfortable, in my view and experience, disclosing the extent of abuse or violence, discussing it and providing the information.

The arbitrator is a decision-maker. It's no different from a judge. This is why we're saying it's very inappropriate to put the arbitrator in the position of receiving that information privately, in particular. If that is relevant evidence, it will get put before the arbitral tribunal in the proper forum. But we're not talking about evidence; this is process screening. It's something that should take place before, just from a proper process point of view, but as well just to preserve the integrity of the arbitration process. No arbitrator would do that. No arbitrator could do that.

The other risk we foresee, of course, is that if you put an arbitrator in that position and the arbitrator meets privately with a party, takes evidence, in essence, privately and doesn't share it with the opposing side, it then becomes a ground for setting the arbitration award aside. Worse, it exposes the woman who gave the information to the arbitrator to a risk of harm because ultimately, on a judicial review, the information she provided the arbitrator would have to be disclosed in the judicial review process. It's critically important that information provided during this kind of screening process never be disclosed to the abuser. We see also a risk of harm to vulnerable women by having them disclose this kind of information to the arbitrator in a private forum. If it's relevant—

**Mr. Zimmer:** But if—

**The Chair:** Mr. Zimmer, I'm sorry. Your three minutes are way over. We're going to go on to the opposition.

**Mr. Zimmer:** Sorry. It was just getting interesting.

**The Chair:** Mr. Runciman.

**Mr. Kormos:** I'd like you to have one more question.

**The Chair:** Mr. Runciman, you have the floor. No? Okay, Mr. Yakabuski.

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**Mr. John Yakabuski (Renfrew–Nipissing–Pembroke):** Thank you for your submission. I'm not a lawyer, to begin with, so I—

*Interjection.*

**Mr. Yakabuski:** Yes. Thank you very much, Mr. Kormos. I'm proud of it, too.

I'm looking at this whole discussion and this whole process. We're talking about arbitration; we're talking about independent legal advice; we're melding lawyers and arbitrators. At this point, I'm looking at this, for example, and the clause that Mr. Zimmer is talking about, which I believe is 58(e). You're saying that the government is saying, "You should be meeting with an arbitrator to discuss whether there is a power imbalance," and you're saying, "No, you've got to meet with a lawyer first to determine if there's a power imbalance."

When you start to look at the complications of all of this, why would people bother with it? It looks like they're going to end up in court anyway, because we've got lawyers and arbitrators involved. You have to ask yourself, I suppose, where the parties are in this dispute resolution situation. I guess my question would be, at this point, if you're getting legal advice and arbitrators involved it would seem to me that the situation is probably already headed for the courts.

**Ms. Jordan:** Arbitration is not mediation. From the limited time I've spent here today, I think there seems to be some confusion about mediation and arbitration. Arbitration is similar to courts in that you are empowering an individual—someone you choose—to make decisions between you and your spouse that will resolve the dispute between you. It's no different than a judge except that you choose who that decision-maker is, you choose the process of how that decision will be made, what evidence, for example, the decision-maker will hear. But it is an adversarial process and parties should have independent legal advice before they enter it. We support that in the bill. But it's not akin to mediation. So it's an alternative to the courts, it's an alternative to heading to the courts, but it is when two parties are unable to resolve, by agreement, a decision and they need someone else to make that decision for them.

**Mr. Yakabuski:** But it would appear that the government is setting, through regulation yet to be seen, all of the terms of reference with regard to the arbitration, not the two parties.

**Ms. Jordan:** It's true that this bill does impose different considerations on family law clients who are going through arbitration than civil or commercial litigation. There are different safeguards here, but we think that those safeguards are important.

**Mr. Runciman:** This is from the Canadian Jewish Congress submission—I don't know if you heard them or



not: "If section 2.2(1) is to be retained, its wording should be amended to read that a family law arbitration is not enforceable unless it is 'compatible with the law of Ontario and with the values entrenched in the Canadian Charter of Rights and Freedoms.'" Do you have any reaction to that suggestion?

**Ms. Linton:** I can respond to that. We didn't hear the submission, but we were briefed on it briefly. I think our sense is that if there is a way of preserving the ability of parties to arbitrate their dispute in accordance with the law of another jurisdiction that is compatible with our law, we would support that. On the other hand, we didn't see this as a significant enough issue to raise a concern within our submissions.

**The Chair:** Thank you very much for your presentation today. We appreciate your being here.

#### NICOLE TELLIER

**The Chair:** Our next delegation is Nicole Tellier. Welcome. Before you begin, if you could say your name for Hansard. When you begin, you'll have 30 minutes. Should you leave time, afterwards we'll be able to ask questions or comment on your delegation.

**Ms. Nicole Tellier:** Thank you. My name is Nicole Tellier. Good afternoon, Madam Chair and honourable members. I'm grateful for this opportunity to speak. By way of personal introduction, I'm a family law lawyer who's been practising in the city of Toronto for 18 years. A significant component of my practice has been the representation of victims of violence, both in the family law process and also in civil lawsuits and administrative proceedings aimed at compensating victims of violence or disciplining their perpetrators. I'm an active member of the OBA and the Advocates' Society and their law reform initiatives, I'm a regular consumer of mediation-arbitration services, and I am also to a lesser degree a provider of mediation and arbitration services. So that is the experiential foundation of my submissions today.

I'd like to situate my submissions in a larger political and legal framework before addressing them specifically. I'm mindful of the work and efforts by various interest groups that led to this legislative initiative, and I understand the importance of this reform. I think we also need to be very mindful of some other context, and that is that in the last decade, we have seen an astronomical increase in the use of private dispute resolution, and it continues to increase. People opt for the arbitration process because it's accessible, because it ensures confidentiality, because it offers control over the adjudicative process and because it's more cost-effective. While the increase in its use may regrettably be symptomatic of some of the foibles of our justice system, including systemic delays and the like, we need to bear these features of the arbitration in mind when doing the clause-by-clause and ensure that they are maintained. I think that can be done without altering or diminishing the integrity of the bill and the policy rationale that informs it.

Briefly, while I have an audience of politicians, I would like to make an important plug. We as family law practitioners have been asking for pension reform for decades. This is an important reform, but we hope that this is the beginning of other family law reforms to come.

Lastly, before I direct my submissions to the more, for lack of a better word, critical comments or concerns I have with respect to the bill, I would like to applaud the amendments to the Children's Law Reform Act in relation to expanding the test for best interests of the child. I sat in a room similar to this probably 10 or 15 years ago as a representative of the National Association of Women and the Law and urged the Legislature then to amend the CLRA to acknowledge that spousal abuse or violence speaks directly to a capacity to parent. This is a long-overdue amendment, and while it ought to be common sense and while there is an abundance of social science literature that points to the serious damage that this can have on families, judges today still do not consider it to be a factor. Regrettably, we must use the mandatory language proposed in this bill to direct them to do so. I'm grateful for that amendment.

The five areas that I wish to address are set out on page 1 of the submission, which I hope has now been circulated before you. This is not an exhaustive list, but these are the ones that I have chosen to deal with in my limited time today: the absence of a meaningful enforcement mechanism; the proposed screening process by arbitrators; the appeal provisions; possible regulations for record-keeping; and the requirement for full financial disclosure when the arbitration agreement is entered into. They're listed somewhat in order of priority.

Let me say at the outset that the absence of a quick enforcement mechanism, in my mind, is the most troubling aspect of this bill. Under the existing Arbitration Act, parties to private arbitration have a quick and easy remedy: Essentially, their award is taken to the court and transferred into an order. Judges routinely, on motion, convert awards into orders. Often, these motions are on short notice or even without notice. Clients who opt for this process are advised in advance that this is a remedy. It's critical to them to know that at the end of the day, they really do have a remedy and that the award can be translated into an enforceable document without unnecessary delay or expense.

#### 1510

As currently drafted, Bill 27 amends part IV of the Family Law Act and says they are enforceable in the same way that a domestic contract is, which would require the filing of the domestic contract in the case of support.

It leaves two big holes in enforcement. The first relates to property awards. Since there is clearly a concern for protecting the vulnerable, I would like to give the example of exclusive possession of the matrimonial home. This is an award that might be made either to protect a spouse who is a victim of violence or to ensure that the children's best interests are met. Under the present bill, there would not be a satisfactory; readily



available award to enforce that kind of property remedy. Moreover, there is an increase, in my view, in the number of cases, including high-conflict cases, that find their way to the arbitration process. So it's important that parenting issues also have an easy enforcement mechanism, and the simplest way to achieve that is to mirror the provisions in the existing Arbitration Act.

Lastly, I wish to point out that many arbitrations are done under the rubric of the Divorce Act. While obviously the province has no jurisdiction to legislate in that area, the Divorce Act provides for spousal support, child support and custody, as do the FLA and the CLRA. Those parties would have the enforcement mechanism available to them under the Arbitration Act, and spouses within the meaning of the FLA would have a completely different regime. I submit to you that, where possible, all members of the public and litigants, whether they be married or unmarried, should have the same remedies. So there is another reason to fix this section.

The recommendation on this is found at pages 3 and 4. I'll leave it to you to read it. I specify the sections in the FLA and the CLRA that would need to be amended in order to achieve the recommendation of an improved enforcement mechanism.

Next, I wish to briefly address the pre-screening by the arbitrator. I think this has already been eloquently stated by my colleagues earlier. Arbitrators are neutral adjudicators. It's completely inappropriate to involve them in a pre-screening process in which they have to assess issues about which they are going to hear evidence, and possibly very controversial evidence. It would not just taint but undermine the entire integrity of the process. I believe it was Mr. Zimmer who was concerned about this issue earlier. I think that the mischief that can be caused if this screening is allowed is much more dangerous than what safeguards are in place in other parts of the bill.

The bill requires independent legal advice before signing on to an arbitration agreement and selecting this process. It's important to remember that separation agreements do not require ILA. People waive ILA when they enter into their separation agreements all the time, nor is a waiver of ILA determinative of having it set aside at a later date. So we are holding parties and their counsel to a much higher standard when entering into this agreement, because they must have ILA. That ILA, hopefully, will help screen the appropriateness of the process for the individual case, and also, there are other safeguards in relation to setting aside an award or judicially reviewing it. I think that, on balance, it is far more important to maintain the overall integrity of the arbitration process with the assurance that ILA should address that issue. The certificate of ILA, for example, if you wish to be practical, could require the lawyer to say that they have screened. It could be part of a standard ILA certificate, and that could be dealt with in the regulations. If nothing else, I would like to think that lawyers read what they sign. They would read that and be mindful of that. I think that's the solution to that conundrum presented by the bill.

I do wish to leave time for questions, so I'll address briefly the appeal provisions. This is another area about which I feel quite passionately, although my colleagues may feel less passionately. This bill is a significant departure from the current Arbitration Act, which permits parties to waive their right of appeal and vest the arbitrator with final binding authority. I think the ability to secure finality through this right of waiver is a key feature of arbitration. I can say from my own experience over many years that most parties elect to waive their right of appeal. If one of the primary purposes of this legislation is to protect the vulnerable, then this inability to waive the right of appeal is actually contrary to that purpose. Victims of violence are among those who wish to have a final award, and if there is an option to have the right of appeal, we should not be paternalistic. We should grant them the agency to choose that right and to allow them the ability to have an award that truly is final.

We also have the built-in default position under the current provisions, which I am suggesting are the ones that be adopted. In this scheme, obviously both parties must consent to the waiver so that if one doesn't, the right of appeal will be maintained. On that basis, I am suggesting that section 3.2.v be deleted and a new section be added, stipulating that parties to an arbitration agreement may elect to waive their right of appeal and that such waiver is only operable if both parties consent to it.

I'd like to address next the regulations for record-keeping. I have to say, I'm not entirely certain what the rationale of these regulations is. Obviously, the underlying rationale should dictate the nature of the regulations themselves. The concern is twofold: One is the maintenance of confidentiality, which is the key reason why many people invoke this procedure; and the second is not to create too onerous a responsibility on the arbitrator, which in turn will result in added costs to the litigant.

If the purpose of these regs is to keep rudimentary data so you know how many cases are being arbitrated and their outcomes, I suspect it will not be problematic. Judges frequently use initials when they're dealing with infant plaintiffs and some regulation can be passed that would ensure confidentiality is maintained. I am certain that arbitrators, who are usually very senior members of the family law bar, can do a précis of their award.

But if the intention is to have a larger body of jurisprudence, then we have different considerations because it would require the deletion of identifying information throughout the award. So I think it's very important that this committee be clear about what the rationale is. I can say from my own perspective that, although I am a consumer and provider of these services, it is not without some regret that the public system is not being accessed more frequently and that we are indeed privatizing family law, something feminists fought strongly to avoid, and we are losing a public record of what goes on in family law disputes. So if the intention is to maintain a body of jurisprudence, then we need to be careful that it can be done in a way that does not impose a burden on the arbitrator or costs on the participants.



The last area where I suggest a recommendation relates to the requirement of full financial disclosure at the time of entering into the arbitration agreement. As I stated earlier, many parties opt for the arbitration process to resolve their parenting issues, and it's completely irrelevant, so it shouldn't be in there. Moreover, the financial disclosure can be either a complex aspect to the case or it can be one in which the parties wish to agree to streamline. It's premature to ask for it at this stage and it would delay both the entering into of the agreement as well as the scheduling of the arbitration. That is access to justice denied. We have appropriate remedies, including motions for third-party production if there are disclosure issues. Therefore, I'm recommending that 56(4) of the Family Law Act be amended to exempt arbitration agreements from the operation of 56(4)(a). My recommendations on this, which appear on page 8, give you draft language in that regard that's very easy. You can achieve this result by adding four words when you do your clause-by-clause later this week.

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Lastly, I've suggested that there be a review. I don't know that any persons who made submissions have made this suggestion, but it is a common and, to me, very useful suggestion when a major law reform initiative such as this is being contemplated. A case in point, of course, is the child support guidelines. Frequently, the new law will require a mandatory review of that law as a way to assess its successes and its shortcomings and to determine whether further amendment or fine-tuning or regulations are required. Since this is going to fundamentally alter the way in which arbitrations are conducted, with a whole scheme of regulations aimed at training and regulation of service providers, I think that it would be remiss if the legislation did not provide a mandatory review process to see if what you're hoping to achieve here is indeed being achieved.

On that note, I think I've left about 10 minutes for questions, and I hope that you have some.

**The Chair:** Actually, you left more than that; you left about four minutes for each party, beginning with the government.

**Mr. Zimmer:** Just on this right to appeal, two questions. In your experience as a family law lawyer, what motivates parties to waive their appeal now?

**Ms. Tellier:** Finality. They want the dispute over. One of the beauties of arbitration is that you select your adjudicator. I have to admit that sometimes we get judges who know less than others, and they are more likely to be subject to appeal or we may be more disgruntled about their result. But for the most part, parties to arbitration are choosing someone that they know has the requisite expertise, and they want it over.

**Mr. Zimmer:** That leads me to my second question, then. If the right of appeal is waivable, then by definition it becomes something you can negotiate whether to waive or not to waive. If it can't be waived and it's always there—it can't be negotiated away—is that not an added protection for the parties to the arbitration?

**Ms. Tellier:** No, it's a disincentive to participate in arbitration. For those who want the right of appeal, they simply don't sign on because that's the default position. One of the things that is evident in high-conflict cases and cases of domestic violence is that you often have what has recently been coined in a case that was just released: litigation bullying. If the arbitrator is vested with the power to make a final award, we can deal with that issue. If you're dealing with a competent adjudicator, then the chances of an error in law are slim. It doesn't mean that there aren't times when there shouldn't be judicial review or that an award ought not to be set aside, and those protections are there. So it's a balancing.

**Mr. Zimmer:** It seems that if I was in a high-risk arbitration, a high-risk case, and I did not have a right to appeal—I'm speaking personally—I might not go into the arbitration because I just want to have that extra step that I can take it to, whereas if I do have the right to appeal the arbitration, I'll at least go through that exercise first.

**Ms. Tellier:** I put the decision-making process to you this way: In considering whether to arbitrate or go to court, one of the considerations is your right of appeal. With the protection of ILA that's been introduced into this legislation, presumably potential litigants will be advised of the difference between the automatic right of appeal under the FLA and the provisions that exist under the current Arbitration Act, which is the model I'm proposing.

The more vulnerable person is the more likely to wish finality and the more likely to have fewer resources to either defend or advance an appeal. So with the greatest of respect, I think this provision is actually completely contrary to the interest group it purports to serve.

**Mr. Yakabuski:** Thank you very much for your thoughtful submission. I just want to clarify the discussion between you and Mr. Zimmer. I think you mentioned when you introduced yourself that you've been doing this kind of work for something like 18 years. You're saying that the most vulnerable of the two people in a relationship before an arbitrator would like to know, going in, that when they are settling this—today, tomorrow, whenever it's settled—that is the final settlement, so to speak, because their concern, if I'm reading you correctly, is that if there are rights of appeal, they, being the vulnerable party, can get worn down, out-financed or—

**Ms. Tellier:** Re-victimized.

**Mr. Yakabuski:** That's another way of putting it. It goes on and on and, at the end of the day, they simply end up being the losers in it. Is that how I'm reading you?

**Ms. Tellier:** That is my experience. As I also said at the outset, my family law practice has always had a significant component of it in which I deal with these kinds of cases and high-conflict cases. That is certainly my experience with those clients.

**Mr. Runciman:** The OBA suggested that parties should be able to waive appeal rights when the arbitrator's a lawyer or a retired Canadian judge, but not



otherwise. It seems a little bit elitist perhaps, but I wonder how you feel about that.

**Ms. Tellier:** That's an acceptable alternative. I support that.

**Mr. Runciman:** How many—

**Ms. Tellier:** I suspect that most—actually, I won't suspect anything. I don't know how many of those who are providing these services fall into that category, and others are lawyers, clerics or others.

**Mr. Runciman:** So someone without the LL.B. behind their name would not be competent enough to make those kinds of decisions?

**Ms. Tellier:** Well, the whole point of this legislation is to require them to make the decisions in accordance with the law of Ontario and not out of their principles. So I thought that just a general ability to waive the right of appeal would be sufficient.

**Mr. Runciman:** I tend to agree with your position on this, but just for whatever reasons, it bothered me.

It seems to me—and I think Mr. Kormos suggested this. As we listen to this, why do people go into arbitration? It strikes me that they don't want the delays, the complexity of getting into the Family Court system and the cost of it as well, and a whole range of reasons. This seems to be, I think, as he suggested, becoming something of a mini-court system. What we're talking about here is the development of a very complex process as well. I'd just like to hear from someone who's experienced in this field. What's your view of what the reaction of people is going to be to what is being proposed here, in terms of this bureaucracy, if you will, the processes that we're contemplating the establishment of?

**Ms. Tellier:** To a large degree, they already exist. As I said at the outset, the use of arbitration as a mechanism for resolving family law disputes is well entrenched in our legal and social culture. I think that the efforts aimed at training and raising the bar of those who are providing services will be welcomed. They don't need to be overly bureaucratic. There are many who believe that we should have mandatory legal education for all lawyers, not just those providing these services. So I think that in large part what we're doing is revisiting something that already exists and making sure that it's meeting the needs of the vulnerable, which has been recognized as a problem.

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**Mr. Kormos:** Thank you, Ms. Tellier. This is very important and I appreciate your comments. On page 3, you made reference to arbitrations under the Divorce Act. What you're telling us is that if Bill 27 becomes law, arbitrations pursuant to the Family Law Act etc. will be dealt with by Bill 27 and those amendments, but an arbitration under the Divorce Act will be based purely on the Arbitration Act, 1991, which means that the arbitrator can utilize faith-based standards, any law that the parties agree to. Is that what you're telling us? That's number one.

Number two, the arbitrator's award has the status of a domestic contract in terms of enforceability. To be enforced, the arbitrator's award, according to the legis-

lation, would have to be based exclusively on Ontario law or law of another Canadian jurisdiction, but a separation agreement—am I right?—is a domestic contract, too, and enforceability of a separation agreement doesn't depend on it being exclusively Ontario law. Does that then create the reality of faith-based arbitrators telling people, "This is the arbitration decision and you will incorporate it into a separation agreement," hence domestic contract, but since this is not an arbitration under the Arbitration Act, it's merely advisory, Mr. Zimmer. Do you understand, Mr. Runciman? There's a domestic agreement, which is not based exclusively on Ontario law, which then becomes enforceable.

**Ms. Tellier:** There were a lot of comments and questions there. I'll try to unpack them. My main point was to point out the remedial differences between marrieds and unmarrieds under the current scheme, and suggest that all Ontario residents who are going through this difficult time, whether they be married or unmarried, should have the same access to remedies, including the enforcement of an arbitral award. The degree to which an arbitrator will make decisions in the shadow of the Divorce Act, which provides different statutory considerations both in respect of child support and spousal support, albeit very similar ones, and what that means for faith-based, to be frank, is not something that I considered before coming here today.

**Mr. Kormos:** Let's face it. Let's cut to the chase here. This is all about the concerns around so-called sharia law. That's what gave rise to this whole consideration, and bona fide concerns. One of my concerns, going back to the domestic contract, is that if people can enter into a separation agreement, whether it's with or without counsel—not lawyers, but the rabbi, the imam, the priest, the clergyperson—are you telling us that it's enforceable, notwithstanding that it may not be based exclusively on Ontario law?

**Ms. Tellier:** There may well be a separation agreement in which there are no property issues as between the parties that has been crafted in accordance with the Divorce Act and has no family law features in it whatsoever. There could be a propertyless couple or there could be a childless couple who are divorcing for whom there are spousal support issues, and they would deal with those issues.

**Mr. Kormos:** They could agree to it whichever they want, if it's a separation agreement.

**Ms. Tellier:** Yes, they can.

**Mr. Kormos:** And the fact that they agree to it in a manner that isn't necessarily exclusively in compliance with Ontario law does not make the agreement unenforceable?

**Ms. Tellier:** No, that's for federal jurisdiction.

**Mr. Kormos:** Okay.

**The Chair:** Thank you very much. We appreciate you being here today.



## TORKIN MANES COHEN ARBUS LLP

**The Chair:** Our next delegation is Torkin Manes, barristers and solicitors. Welcome.

**Mr. Lorne Wolfson:** Good afternoon.

**The Chair:** I have three delegations listed.

**Mr. Wolfson:** Actually, it will be two.

**The Chair:** If you could identify yourselves, if you're both going to be speaking, and the group that you speak for, and when you begin, you'll have 30 minutes.

**Mr. Wolfson:** My name's Lorne Wolfson, and I will be speaking on the issue of the use and advisability of arbitration in family law procedures. Dr. Barbara Fidler is seated on my right and will be speaking to the importance and issues of parenting coordination. I've provided you with a paper that lays out some of my concerns. In the brief time I have, I'll try to highlight a number of those concerns.

I've practised family law in Toronto for approximately 29 years. I'm a certified specialist and I'm a dispute resolution officer certified by the Superior Court of Ontario. I support the joint recommendations from the ADR and family law sections of the Ontario Bar Association, the submission of Mr. Bastedo regarding enforceability of arbitral awards, the submission of Dr. Landau regarding training of arbitrators, as well as the submission of Dr. Fidler that you'll hear regarding the role of parenting coordinators.

My comments relate to the importance of preserving and facilitating the use of arbitrations in family law proceedings. Over the past 10 years, I've reached the point where I refer over 90% of my family law cases that cannot be resolved by way of negotiation to arbitration. The reason why I do that and why so many other senior family lawyers are doing the same is important for you to understand. I've tried to lay out briefly in my paper a number of those reasons.

First of all, arbitration is faster and more convenient than proceeding in the court system. Simply obtaining an initial application date in the court system can easily take six to eight weeks. You can be in front of an arbitrator in a matter of two to three weeks, and sometimes earlier if necessary. To get a date for a motion in the court system can often take two to three weeks. You can be in front of an arbitrator on an urgent motion within a matter of days.

The arbitration system allows parties to choose their decision-maker. In the court system, you get the judge who is sitting the day you bring your motion or show up for your trial. Many judges are very experienced and dispense excellent justice; many judges have absolutely no family law experience and the quality of their decision-making is quite uneven. In arbitration, the parties have the right to choose their decision-maker, and typically their decision-maker is someone who is qualified both in family law and in the arbitration process. If not, they wouldn't be choosing them in the first place.

In a typical court case, you arrive in front of a judge on a motion, and that judge could have 12 or 15 other cases on his or her list that day, which means that if

you're lucky, you get 45 minutes of that judge's time. He may or may not have had an opportunity to review your materials. In arbitration, you are typically the only case in front of your arbitrator. The arbitrator will have read your materials and will have as much time to devote to your matter as the case requires.

In my experience, arbitration is much more cost-efficient. Courts are procedurally slower. The arbitrator can develop whatever procedures, formal or informal, he or she wishes and the parties wish to move the matter along.

Confidentiality is important for many parties. In the court system, unless the judge seals the file, which is a rare event, the proceedings are public. Anybody can sit in, and they can be reported in the public press. Typically, arbitrations are private and are not available to members of the public.

Finality is a major reason for parties choosing arbitration over the court system. Proceedings in the Family Court typically can take six to 18 months, and it's not unusual to see cases that drag on two to three years. In my experience, arbitrations rarely last more than six to nine months, and interlocutory proceedings, motions and procedural matters are done much more quickly.

Effectiveness of mediation-arbitration: In the hands of a skilled arbitrator, most cases are resolved very quickly. Many family law parties opt for a process called mediation-arbitration, where they contract to resolve the case before an arbitrator, but the arbitrator has a mandate to try to resolve the case through mediation first. It's very effective where you have a skilled mediator-arbitrator. In my experience, I've probably done 100 cases of mediation-arbitration in front of many senior family arbitrators in the Toronto area. I would say that over 90% of those cases resolve in the mediation phase, never get to the arbitration phase, but it's the stick of the arbitration that allows the mediator-arbitrator to assist the parties in resolving it themselves.

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Many of the submissions you have heard suggest that arbitration will not protect vulnerable parties, and it's been suggested that the court is a much better protector of their rights. In my view, it's exactly the opposite that is the case. The court system is a very poor place to go if you're a vulnerable person. If you do not have a deep pocket, if you're a woman who perhaps is intimidated by your spouse, if you are not someone who is able to play the aggressive litigation game, then court is a very unfriendly place for you. That is why, frankly, in my experience over the last 10 to 15 years, arbitration has become such a popular alternative, particularly with parties who are more vulnerable.

The choice, in many cases, isn't arbitration versus the court system, because very few cases get to trial. The choice is between arbitration and people walking away from the court system saying, "I give up," and in most of those cases agreeing to their spouse's terms and agreeing to settlements that very often do not reflect principles that we agree are reasonable and that are very often very bad



deals. In my experience, arbitration is an effective tool to level the playing field and let vulnerable parties participate on the same level as parties who have greater power.

Many of the changes in the proposed legislation are good. The proposal to give power to the parties and responsibility to the lawyers giving ILA when the arbitration agreement is first signed is a positive step. Arbitrators should be trained to ensure that they have standard qualifications in terms of knowledge of family law and Canadian arbitration procedures. However, the changes in the legislation such as weakening finality and taking away the decision-making regarding appeal rights will weaken arbitration and in my view make it a less desirable alternative for those who are looking for that alternative.

Those are my submissions. I'd be happy to answer any questions that you have.

**The Chair:** Maybe you both would want to speak, and then we'll see how much time is left over for both.

**Dr. Barbara Fidler:** The following is a summary of my submission. You have the longer version in writing before you, along with my CV.

There is a need to speak on behalf of separating and divorcing parents who need and consent to arbitration, mediation-arbitration and, in particular, parenting coordination, the latter a more recent dispute resolution alternative also governed by the Arbitration Act. There is also a need to speak on behalf of both the legal community and mental health professionals, who are committed to helping high-conflict families.

I am an experienced psychologist and have been working with separated and divorcing families and, in particular, high-conflict families for more than 23 years. I am also a member of the Association of Family and Conciliation Courts' multidisciplinary task force, which developed guidelines for the practice of parenting coordination approved by the board in May 2005. I support the joint recommendations of the ADR and family law sections of the Ontario Bar Association, as well as the submissions of Thomas Bastedo, Dr. Barbara Landau, Lorne Wolfson and Ms. Tellier.

After defining parenting coordination, I will address concerns about the proposed amendments in terms of regulation, unenforceability, section 59.4 and subsection 59.7(2). Parenting coordination is an alternative dispute resolution process reserved for a minority of families who remain entrenched in chronic conflict years after the separation and divorce and for whom adequate assistance has not been provided by our overburdened courts. Typically, a single family has already relied upon numerous professionals, including several lawyers, therapists, community and child welfare agencies, mediators, assessors and, in some cases, more than one assessor.

These families have high re-litigation rates, much of the time over small issues that do not fall under the auspices of legal custody, be it sole or joint. They struggle with implementing their parenting plan and argue incessantly about day-to-day matters such as choosing holiday dates, making temporary changes for special

events, parent-teacher meetings, school field trips, extra-curricular activities, the movement of hockey equipment, parent-child telephone contact and even haircuts. They sweat the small stuff, and this in turn creates havoc and significantly compromises their children's adjustment. It is a waste of resources, ineffective and counterproductive to attempt to have these types of disputes resolved by the courts or through interminable negotiations between lawyers.

Pursuant to the AFCC guidelines, parenting coordination is a post-parenting-plan service chosen on consent by the parties with independent legal advice at the time their parenting plan is being finalized. The ultimate goal of parenting coordination is to protect and sustain safe, healthy and meaningful parent-child relationships. More specifically, parenting coordination involves minimizing parental conflict, and thus risk to children, by disengaging the parents and by resolving ongoing implementation problems in a non-adversarial forum. The parenting coordinator provides education, intervention, coaching and facilitation, all with a view to eradicating ambiguities and loopholes in their parenting plan, which only breed more conflict. In addition, the parenting coordinator assists the parents to reach a mutually acceptable resolution.

If an agreement cannot be attained, the parenting coordinator has the authority under the Arbitration Act to modify the parenting plan and make binding decisions; however, only within a certain limited scope. Pursuant to the guidelines, the parenting coordinator does not have the authority to make decisions with respect to legal custody, the permanent residential schedule or relocation to another jurisdiction. Neither is the parenting coordinator determining matters related to property, support or finances. In mediation-arbitration, the scope of authority may include all matters of custody and access. In my written submission, you'll find more about the historical background of parenting coordination and how it is practised in other jurisdictions.

Minimum requirements for qualifications and training are imperative, and these, along with regulation standards, currently exist. Each of these is elaborated further in my written submission. They exist in the AFCC guidelines for parenting coordination, in the Ontario Association for Family Mediation standards for accredited mediators and their policy on abuse, and at the licensing colleges for social workers, psychologists and psychiatrists. This is a requirement that people who do parenting coordination are both accredited mediators and have licences to practise. They also exist in the Regulated Health Professions Act and the associated legislation that governs psychologists and psychiatrists and, finally, in the Ontario Psychological Association guidelines for child-custody-related work that includes mediation and arbitration. They are updating their guidelines to also include mediation-arbitration and parenting coordination.

Moving now to enforceability, the proposed amendment to remove the binding nature of decisions and, in effect, prevent enforceability is counterproductive and



defeats the primary objective of minimizing risk to children by minimizing parental conflict. This proposed amendment inadvertently places the more vulnerable parent at risk, because now the more powerful of the two can keep the issue alive by appealing decisions just because such appeals are permitted and easily exercised. Vexatious and frivolous complaints are not uncommon in this minority of chronically conflicted parents. Or the parent who supports the decision may have to sue to enforce the decision, again keeping the conflict and litigation alive. Finality—that is, the resolution of conflict—is imperative for these families, and in particular the children. That is why the parents consented to the process in the first place. Relevant here is that the issues before the parenting coordinator are minor in nature, although still causing significant conflict and potential damage to children.

It is important to note that the judicial review of a decision made by a parenting coordinator or mediator-arbitrator that has involved an unfair or unjust process remains possible under section 46 of the Arbitration Act, with its nine separate grounds for appeal. This is sufficient to protect the consumer, as evidenced by cases in the past. See, for example, *Hercus and Duguay*, where decisions were set aside because the process was not proper.

Section 59.4 does not protect children from parental conflict and, instead, is likely to inadvertently increase risk to them. The proposed amendments indicate that parents would have to wait until after a dispute emerges before agreeing to their dispute resolution mechanism. Again, this defeats the very purpose and benefits of these alternatives for child-focused, speedy and relatively cost-efficient resolutions.

The need to resolve the problem quickly and cost-efficiently cannot be overstated, as this will in turn protect the children from conflict and minimize risk to them.

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Without exception, parents must obtain independent legal advice and be fully informed about whatever dispute resolution process they choose. Unnecessary delays, coupled with the escalation of detrimental parental conflict over what are often time-sensitive and relatively minor issues, are inevitable if the process and the acting professional are not named when the parenting plan is finalized, which necessarily is in advance of future disputes. Agreement in advance of a dispute is a much-needed preventive measure for protecting children from parental conflict.

Finally, the proposed definition of “secondary arbitration” and the inclusion specifically of “possible future disputes relating to the ongoing management or implementation of the agreement, order or award” appear to indicate that parenting coordination would be an instance of secondary arbitration and therefore permitted. Accordingly, and to avoid any confusion in the escalation of parental conflict, I propose that parenting coordination be specifically named as an instance of secondary arbitration. Thank you.

**The Chair:** You’ve given about four and a half minutes for each party to ask questions.

**Mr. Yakabuski:** Thank you very much for your submissions. I’d like to ask Mr. Wolfson a couple of questions. Well, they apply to both of you because you covered similar topics on a couple of things.

It seems, as we’re hearing the submissions today, that there’s not much of a problem out there with arbitration; there was a problem with faith-based arbitration. That seems to be the common thread.

Another common thread is this right to appeal that we’re hearing from a lot of different people, and the fact that the proposed legislation—I think it is 58 something or other—takes away the option of people waiving their right to appeal, however you want to term that legally. It seems to me that there is a lot of concern with regard to that specific section, or amendment to the act, if you want to call it that, first of all because of the concerns that the more powerful of the two will prolong this thing to the extent that the weakest eventually submits, and that in the end is certainly to their detriment. I think we can all see the likelihood of that happening; it’s certainly at least a possibility.

On the arbitration side of it, the Canadian Jewish Congress proposed a couple of amendments this morning. One of them was that the arbitration is not enforceable unless it is compatible with the law of Ontario and the values entrenched in the Canadian Charter of Rights and Freedoms. Could you support that amendment? As well, if you want to respond to the other two questions.

**Mr. Wolfson:** I personally have no objection to those changes. I think that’s very similar to the part of the legislation that suggests that decisions are only enforceable if they’re consistent with Canadian law. I have no problem with that.

In regard to your previous comments, arbitration, in my view, has been working very well. I think the parts of this legislation that would standardize qualifications, that would standardize the ILA given to individuals going into arbitration agreements, are all for the good. I echo Ms. Tellier’s comment that by limiting the right to opt out of appeal rights, you in fact are taking away the power from the most vulnerable, which is probably the opposite of what was intended. But I agree 100% with her analysis.

**The Chair:** You have a minute and a half if you still want to ask a question.

**Mr. Yakabuski:** No. Thank you very much.

**Mr. Kormos:** Thank you, both of you. I’m becoming increasingly interested in this issue of appeal and I hope the government is too. I’m looking forward to what Mr. Bastedo might have to say about it. One of the hallmarks of arbitration, of course, is the ability of the parties to design or tailor-make, if you will, a process. That’s where the efficiencies come in; is that fair?

**Mr. Wolfson:** Yes. I believe that’s fair.

**Mr. Kormos:** But the appeal from the arbitrator’s award, whether the appeal is valid or not, is to the very Superior Court that you, Mr. Wolfson, talked about as



having the huge backlogs and the inherent delays and the luck of the draw when it comes to picking a judge.

**Mr. Wolfson:** Yes, I agree with that. To add to that, there already is the protection in the Arbitration Act, which Dr. Fidler mentioned, that if there has been any type of procedural unfairness it can be overturned by judicial review. Whether the appeal rights are there or not there, those rights for judicial review remain.

So all we're saying is that for the really bad cases where something went off the rails and the arbitrator ignored due process, for example, judicial review will be there. But for someone who just doesn't like the result and wants to continue this and has the deeper pocket or wishes to be abusive, that's where appeal rights will give him or her the opportunity to keep the fight going. In my view, it's not necessary and the parties should be given the opportunity to waive it. If they choose not to, that's their decision as well.

**Mr. Kormos:** In a faith community, where women may not be held in the same regard as one would wish they were and a woman, therefore, is co-opted if not outright coerced into participating in that faith-based arbitration, even a small-a arbitration—you see, my concern is, how do we still protect that woman, because if she can be coerced into participating in that small-a arbitration, she can be similarly coerced into complying with the award. She's not likely to go and appeal it.

**Mr. Wolfson:** I think the solution to that is not expanding appeal rights at the end of the process. I think the solution is ensuring that when the parties sign that arbitration agreement at the beginning of the process—that's the thing that commits them to arbitration in the first place—the lawyer whom each party has to meet with, who gives them the independent legal advice, has done his or her job. That includes satisfying themselves that that person is entering into this arrangement, number one, with knowledge, understanding the implications of it, and, number two, voluntarily, and that there is no undue influence or duress or any other circumstances lurking in the background which would vitiate their consent. That's the protection. It's at that stage, not at the other end.

**Mr. Kormos:** I appreciate that family mediation is a very special part of the mediation family, if you will, that different skills are required of family mediators than other mediators. But understand, I come from down in Niagara, where steel plants and paper mills have shut down, and those job losses of course have an immediate impact on family breakdowns. Where people don't have very big incomes, they end up in Family Courts and, with all due respect, they can't afford your services or your services. They can't afford to retain private arbitrators. They can't afford to pay for that process. They're stuck in a Family Court system that's underfunded; it's a sausage factory. The staff aren't well served, the judges aren't well served, the litigants aren't well served. I can't see anything here that does anything for those folks I represent, with all due respect to the—

**Mr. Wolfson:** I don't think anything here does anything for those folks, because those folks only have one choice. But we are talking about the people who, for whatever reason, do have an option and choose to go into the arbitration process. I think the whole discussion today is what, if any, limits should be put on that process for the people who choose to go down that road.

**Mr. Kormos:** Thank you. I wish my constituents were wealthy enough to use arbitration.

**The Chair:** Mr. Zimmer.

**Mr. Zimmer:** I understand why mediation is obviously user friendly to the parties, because they want to talk back and forth and resolve their disputes. But arbitration is much closer to the litigation model in the sense that the people have not been able to mediate their disputes, so they're saying to a third party, "We can't decide. You impose a decision. You give us your decision."

What is the protection, then, if, in the arbitration process, people going into it obviously can't settle their differences and they're saying, "Impose a decision on us," if there's no right to appeal and that arbitration gets nasty and ugly and moves closer to a trial model? Is it not wise in those circumstances to preserve an automatic right of appeal?

**Mr. Wolfson:** I think you should assume that if a case goes to arbitration, it's ugly. The easy ones get settled long before that stage. So the ones that go to arbitration are the difficult ones; they're contentious. The reason they are there is because they need someone to make a decision. It's not mediation; it's arbitration.

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The protections are that people have chosen the arbitrator because of his or her reputation, qualifications, and the people want to be there. Once they're there, they want that person to make a decision; they enter the process. Again, assuming the lawyer has done his or her job in the ILA associated with the arbitration contract, and understanding all of the ups and downs, they've decided to leave the court system.

The appeal rights do not improve the chances of better justice. The chances of better justice are with knowledgeable people entering into the process and choosing the right arbitrator for him or her. If we're worried about the arbitrator, as I said before, who goes off the rails, who doesn't follow procedural fairness, who is biased, who does not listen to both sides and who has made his mind up in advance, the protection for that is in judicial review. Judicial review is the remedy for all of that. You don't need an appeal for that. An appeal is basically saying, "I can't point to anything that was done wrong procedurally, I just don't like the result. I want another person to look at the reasons and overturn it because I'm not happy with the result." I say that's inconsistent with the finality that most litigants want.

**Mr. Zimmer:** As a lawyer, going through the judicial review exercise, the grounds are more expansive; you can always find something to do a JR on. The appeal mechanism isn't traditionally the right of appeal; it's a much narrower basis on which you can appeal. So that being



the case, wouldn't it be cheaper to go through an appeal mechanism rather than through a judicial review mechanism?

**Mr. Wolfson:** In my experience, appeals involve much more cost, much more delay, and whether the appeal is successful or not, the other party is dragged along. That's why I say that it's unnecessary if the parties choose they don't want an appeal right. For the bad cases that do go off the rails, where protection is necessary and nobody foresaw that the arbitrator would make his mind up before he or she heard the evidence, then judicial review is there. In my experience, it's a much more efficient remedy for the cases that need it.

**Mr. Zimmer:** Isn't an appeal mechanism a simpler mechanism than a judicial review?

**Mr. Wolfson:** Not really, because you need to get transcripts, number one, and the cost of the transcripts of the hearing can be very expensive; there's significant delay, depending on what body you're going to; you can have appeals of interlocutory proceedings, which means you never actually get to the hearing. In my experience, appeals can add significantly to cost and delay. Again, I'm not suggesting that they should be banned. All we're saying is to let people make their choice. Don't take away the right of decision-making.

**The Chair:** Thank you very much for your delegation today. We appreciate your being here.

#### THOMAS BASTEDO

**The Chair:** Our next delegation is Thomas G. Bastedo. Welcome.

**Mr. Thomas Bastedo:** Thank you, Madam Chair and members of the committee. I have distributed two documents. One of them is a paper which I delivered about three years ago to a meeting of the International Bar Association in South Africa. This paper rose out of the 1991 Arbitration Act in Ontario. Believe it or not, there has been a lot of discussion amongst those who do arbitrations, especially in family law, with respect to this act in comparison to many other jurisdictions, some of which, as has been pointed out, do not permit any arbitrations and some of which permit various types of arbitrations.

I gave you this paper because it sets out in fairly succinct form, I think, for a general audience, the differences between mediation, mediation-arbitration, and arbitration; it deals with the interrelationship between the Divorce Act, the Family Law Act and the Children's Law Reform Act in this province; it talks about the process of conducting an arbitration or a mediation-arbitration; it contains in its appendices various types of agreements which are commonly signed in this province—mediation agreements, mediation-arbitration agreements, arbitration agreements; and it sets out various matters of interest to the public and to lawyers who are advising clients on when to do one sort of process as opposed to another, and various checklists. I don't intend to refer to this paper

today, but I leave it with you and I hope it will be of some value.

I'm here today for two reasons, and these reasons are connected with the two aspects of the proposed bill which, in my respectful submission, if accepted, will vitiate the current practice of arbitration and mediation in this province.

There has been a good deal of discussion about other matters arising out of the bill which I've heard today. One of them most recently discussed was the matter of the right of appeal. While these issues are of interest and people have validly held views on either side, quite frankly, if the bill allows appeals or doesn't allow appeals is not going to destroy the process in this province. I personally stand on the side of Ms. Tellier and Mr. Wolfson, but I can live with the fact that there may or may not be appeals of various types. It will not really affect my practice. Most of my cases deal with people who do not want appeals, but if they do want appeals, that's fine. I don't know how many arbitrations I've conducted, but it's certainly more than several hundred, and I've never been appealed once. I've been judicially reviewed two or three times but never appealed. People put in the right of appeal because it gives them a subjective protection, or they believe it does, and I have nothing, really, against that.

My curriculum vitae is set out in tab A to my submission. I have been doing arbitrations and mediations since the year after I was called to the bar in 1971. I did my first arbitration in 1972 and I've been doing them ever since. I've done arbitrations in labour work, commercial work, family law and, most latterly, the last 10 or 15 years, in family law.

There are two fundamental problems with this bill, and I emphasize that if these problems are not resolved, the process will not be effective in Ontario and people will not go into the process. Whether that's good or bad is not my prerogative to say, but I do take the government at its best position that it wants to significantly improve the arbitral process in the province, and I'm here simply to make some suggestions as to how that better can be done. I have deliberately not dealt with many of the policy initiatives because, again, I'm here as a technical person, as an arbitrator, and I leave the policy provisions to other persons. But I've tried to put my recommendations in a format which will not in any way destroy or alter the policy objectives of the legislation as I see it.

Various persons have discussed before you the enforcement provisions, and I wish to emphasize them in some more detail. The enforcement provisions of the legislation, if not changed or corrected, will make arbitrations in the province non-effective and as if they did not exist.

The second area that I wish to discuss is the prohibition on entering into arbitration agreements today which will affect disputes in the future. As you are all aware, the section in the legislation prohibits this from happening. It is my urging that this provision of the



legislation be changed, for reasons which I shall discuss. If the sense of the committee and the government is that it not be changed, then I have several alternatives to offer to you, which will at least be half a loaf, as it says.

If the arbitration process is removed as an access provision to the people of Ontario, then it will remove something which is currently cost-effective. It is substantially more cost-effective than the alternatives available. I agree with those persons who have said that it is effective mostly to those who are most disadvantaged in this process, the process of domestic dispute resolution; that is, women and children.

I have nothing further to add other than to support the, I thought, very powerful comments Mr. Wolfson made.

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I'd like to tell you a little bit about the sort of arbitrations I do, because they're directly relevant to the first point I'm going to deal with, and this is the enforcement. I do arbitrations that can be formal, like a trial. I have done arbitrations that have lasted as long as three weeks. I do arbitrations that are informal and could last as little as 15 or 20 minutes. I've done arbitrations over the telephone.

To give you an example of the latter, there might be a question that people want decided in a contract—a separation agreement—and they want to know which of two possible interpretations should be put forward. They would, for example, send me some written submissions and they would have 10 minutes to argue on the telephone, and I will decide. They will accept that, or else they wouldn't have hired me in the first place.

On other occasions, on formal arbitrations, the process will take into account expert witnesses, full production of documents and all the witnesses that one would expect in an ordinary trial.

One of the advantages of an arbitration is that the parties, through a pre-arbitration process, will decide the process by which the dispute is to be resolved. Let me give you a simple example. Supposing one of the issues is the valuation of a car dealership. In the ordinary course of a trial, the expert who gives the valuation of the car dealership will come to court, give his or her evidence on that dealership, and then they will be cross-examined. In an arbitration process we can agree that the expert can write a report, file the report and then the opposing person's expert or lawyer can simply cross-examine that expert. We can agree as well that the two parties will hire one expert and the expert will file the report on the valuation of the car dealership and then each party could cross-examine that particular expert.

Either one of these methods is going to save two or three days of court time. There are other ways that I won't take the time of the committee to describe, but suffice it to say that the comments Mr. Kormos made earlier today when I was here with respect to the antiquity—he didn't use that word; this is my word—of the evidentiary rules that bind our court system and that elongate civil trials and are under attack in many juris-

dictions of the world are now discarded on a regular basis through the arbitration process.

In an arbitration, experts like Dr. Fidler, who is one of our finest psychologists dealing with this matter, can decide these things without the paraphernalia of a court system. What she didn't say and what is important to understand is that if two parents are fighting about, in her example, the times when the children should play hockey or not—and it's a very important issue in this country as to whether or not a child attends hockey practice four nights a week or whether for one of those four nights the child will be with the non-resident parent. It's a very difficult problem to deal with. If there's not someone like Barbara Fidler to deal with something like this, then the court has to deal with it. Most of the time, that involves the courts that Mr. Kormos is talking about.

Do you realize that in Brantford, Ontario, the Superior Court sits once a week? There's one judge, and that judge deals with all sorts of problems in Brantford: mechanics' liens, construction problems and problems dealing with whether John Smith can play hockey on Tuesday night with the Brantford hockey team in his league or whether he should spend that three hours with his mother or father, as the case may be. If you take away from someone like Dr. Fidler the ability to deal with this, you are left with that process.

In any event, that is an overview of the arbitration process.

During this process, all sorts of decisions have to be made. Let's go back to my example of the car dealership. Suppose the valuator asks the owner of the car dealership to give him or her the papers upon which he will base his decision as to the value of the car dealership, and the owner says no. That is a very early stage, and the arbitration process has what we call an interlocutory structure so that I can make a decision. Now, I make the decision that Mr. Smith must produce the financial statements of his car dealership for the last five years to the valuator; that is obligatory, and he doesn't do it. Now what happens? If there is no enforcement provision, that then goes into the court system, and the only way to get those papers is for an action to be instituted, a statement of claim. The claim, through the court system, will ask that the papers be produced.

That is what your bill is doing at the present time. If you take away the enforcement provision under section 50 of the Arbitration Act, you take away my ability simply to file the document in the court, and, as Ms. Tellier said, in one hour the judge will say, "This is the order," and that can then be enforced like a regular court judgment, through contempt, imprisonment or whatever. So that's an example of an interlocutory process, which is essential to the running of any dispute mechanism.

A similar sort of position was with respect to the declaration of possession of a house. What happens if there's violence in the house during an arbitration? Right now, I as the arbitrator have the ability to exclude one of the spouses so as to allow the other spouse to remain in the house with or without the children. But if I don't have



the power to have that enforced, then there is no way that anybody's going to come to Tom Bastedo or avail themselves of this process to say, "Mr. Bastedo, my wife has a big problem. She's an alcoholic, a drug addict. It's not good for the children. I want her out of there." So there's a hearing and it's decided. I say that with respect to the interlocutory process, it's essential to have the enforceability.

The second part of this relates to the ultimate enforceability of the award. Right now, your bill says that the award is to be enforced like a domestic contract. This means that if the domestic contract is to be enforced, you have to bring an action, you have to bring a claim, you have to bring an application in the court system to enforce it. So let's go back to our car dealership. Suppose I find that the car dealership is worth X dollars and the non-asset-owning spouse gets X minus \$5. Let's say we have \$95 left. That is the amount owed by the car dealer to his wife in terms of the resolution of the monetary issues, so I order \$95. What happens now? That goes to the court under section 50 of the Arbitration Act, a judgment is given for \$95, and it's enforced like any other judgment creditor. What happens with the bill? That \$95 is there, so the person who now owns the judgment, as it were, has to bring an application in the court system and enforce it like a contract debt. That then is subject to all the defence mechanisms put forward in the defence of any other type of action. It means the case is going to be tried twice. I say to you, on number one, that unless there is the enforceability put back into the system, it won't work.

What's the second problem? The second problem is in paragraph 14 and following in my submission, relating to the arbitration of ongoing disputes or disputes which may arise in the future. I have put in three types of examples that bring the problem to the fore.

The first type is the one that Dr. Fidler brought forward, and that is the parenting coordinator. There is an industry in Canada now, and certainly in Ontario, whereby many people like Dr. Fidler—although not all of them have her qualifications—assist dysfunctional families in the management of their children. The concern here is that the legislation as currently drafted does not permit one to enter into an agreement which will provide for the resolutions in the future. I suggest that most of us would agree that that has to be resolved.

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Let me give you another example. In this country, as you know, the obligation to pay child support is a function of income. Lots of people's incomes vary. Suppose Mr. A has an income of \$65,000 this year, and next year his income is \$78,000. Someone says, "No, it's not \$78,000. It should be \$84,000, because he falsely or incorrectly deducted an expense for a new car. He didn't need a new car, so that \$6,000 should be added back, and that is the income upon which child support functions."

I am named, as are many other people, as a permanent arbitrator of this sort of dispute. People enter into agreements. They say, "We have to have the income for child

support done every year. Let's pick Tom Bastedo or Philip Epstein or Lorne Wolfson or Nicole Tellier or somebody like that to decide each year what the income is and then what child support flows from that." This is usually a straightforward, simple and effective process that decides the income. What is the alternative? The alternative is to bring an application in the court, where you have to go through two or three pre-trial or settlement conferences. Eventually, if you can't solve it, how do you solve it? You have a trial. So there are many types of agreements that have permanent arbitrators set out in clauses that decide all sorts of things.

There has been some concern about marriage contracts. As you know, there are four types of agreements set out in the Family Law Act in your definition of a family arbitration in this statute, and marriage contracts are one of them. Today, there are all kinds of marriage contracts. I suppose this is where we get into the problem of, are we trying to fix arbitration or are we trying to fix faith-based issues?

Certainly, if we stick to the former as opposed to the latter, there are many marriage contracts today between persons who are, say, over 40, who have some assets, many of whom have been married before. What they do ordinarily is keep the assets they have, because most times their children wish them not to divide their assets with their new spouse. Then there may be a dispute about their income. Suppose one of them earns \$100,000 a year and the other one earns \$20,000 a year. The dispute, if there is a separation, is who is going to pay somebody support, if there is indeed going to be support.

So what do they do? They put in an arbitration clause. They say, "Tom Bastedo or someone like him will decide, if we separate, how much money we're going to have to pay for support. If there's a dispute about the sale of the house"—and there always is: sometimes people don't agree on the price; they don't want to take a vendor-takeback mortgage; they want a different kind of financing—"if there's some sort of disagreement, let him decide that as well. And if we can't decide who's going to own the new television we bought last year and whether the television set is going to be traded for the stereo, let Tom Bastedo decide that as well." So you have a whole bunch of these things in here, and you get people like me written in the marriage contract as deciders. Half the time, the fact that I am in there as a decider means there's nothing left to decide.

I'm saying to you, what are the solutions to this? The first solution and the best solution, I submit, is simply to eliminate—let me get it right for the record—section 59.4. That section says, "A family arbitration agreement and an award made under it are unenforceable unless the family arbitration agreement is entered into after the dispute to be arbitrated has arisen." I say take it out. Why do I say that, aside from the practical reasons I've given? Because you have put into the statute safeguards now that I do not have any problems with; despite some of the quibbles, I see no real problems. You've put in safeguards and you can assure yourself that the arbitration



agreement is going to be well-negotiated, well put in. If something is going to last for a long time, there is nothing magical about having it last just because it's going to be resolved in the future. Every day, we enter into contracts that last for years. So what's the matter with entering into one like this?

This would completely solve the problem of your definition of "secondary arbitration." If you're not willing to do that, and I understand why you might not be, then secondly, we have to deal with the definition of secondary arbitration. I know you're going to do this on a clause-by-clause basis, and I bring to your attention my definition in section 19 of my submission—and this is different from the bill's definition—which says: "‘Secondary arbitration’ means a family arbitration that is conducted as a result of a family arbitration agreement"—and that is defined in the statute—"and which provides for the arbitration of possible future disputes which are clearly described and set out in the family arbitration agreement."

What's the matter with that? Let's go back to the marriage contract. We just say at the beginning that if there is a dispute over who is to pay support to whom at some time in the future, that's going to be set out in the marriage contract, and that, therefore, is a secondary arbitration and can be dealt with.

The last solution I have—obviously, these are in decreasing order of preference—is the solution that was adumbrated by Marion Boyd in her report, in paragraphs 5 and 6, where she distinguished between cohabitation agreements and marriage contracts and separation agreements. If you are unwilling to accept my solution with respect to the family arbitration agreement, which under your definition includes all different kinds of domestic contracts, then you can bring it back to the separation agreement and say that we can put in a separation agreement alone the right to arbitrate things that arise in the future. Going back to Dr. Fidler's example, a parenting coordinating agreement can be called a separation agreement, because the language in section 56 of the Family Law Act permits us to do so, and therefore the parenting coordinating agreement becomes a separation agreement and the issues are solved.

I'm sorry I've taken up so much time. I hurried a bit, and I've got a few minutes left. Those are my points.

**The Chair:** A very thoughtful presentation. You've given two minutes for each party to ask you questions, beginning with Mr. Kormos.

**Mr. Kormos:** Thank you very much, Mr. Bastedo. Quite frankly, on the subcommittee, we were excited when we saw your name on the list. We're pleased that you came and participated in this.

**Mr. Bastedo:** Thank you. I'm honoured to be here.

**Mr. Kormos:** Look, even if this bill passes, people are still going to come to you and sit down with you and design an arbitral process that's custom-made for their dispute, whether it complies with the new Arbitration Act as amended or not. They will lose the enforceability element of it. What do you think is the most operative

reason that people come to you? Is it your reputation, your skills? Is it because of enforceability? I appreciate it's both, but what has priority: enforceability, or the fact that you are adjudicating, the fact that you are determinative of issues that help them resolve a dispute? Quite frankly, they could simply then put your determination into a separation agreement.

**Mr. Bastedo:** Mr. Kormos, I'm flattered by what you say, but really, when you make a decision, usually someone's not that happy, because when they come to you, both parties perhaps believe they have right on their side. So I believe you have to have the enforceability. I really believe that strongly. There is no one who does what I do, or any of the lawyers who appeared here before—they will all agree with that one point.

**Mr. Kormos:** Okay, sir. Thank you kindly. This is going to change the face of family arbitration, and significantly.

**Mr. Bastedo:** If it's not amended, I believe that it will destroy it and cease to make it efficacious. I really believe that.

**Mr. Zimmer:** Thank you. Welcome. I can tell you that anything I know about family law and arbitration is largely the result of reading your stuff over the years.

**Mr. Bastedo:** Thank you, Mr. Zimmer.

**Mr. Zimmer:** Just a question on your proposed definition of secondary arbitration. "‘Secondary arbitration’ means a family arbitration is conducted as a result of"—and so forth and so on—"of possible future disputes which are clearly described and set out in the family arbitration agreement." That definition is the one you're proposing. Why would you even bother to put in the phrase, "which are clearly described"? I would think that's a pretty hard thing to predict over the life of an arbitration agreement: all the possible disputes that might arise. Wouldn't it be even more efficacious just to say, "of possible future disputes," period?

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**Mr. Bastedo:** But if you're going to do it that way, then just take out 59.4. Just take it right out. I'm not a legislative draftsman. You're absolutely correct: On the subject matter of "which are clearly described" or something like that, I was told that if there was any merit in these submissions, it would go to somebody who is a draftsman, and that's not me. But certainly it's the subject matter which is of concern to me.

**Mr. Zimmer:** All right. Thank you.

**Mr. Yakubuski:** Thank you for your submission. You're not working together with Ms. Tellier and Dr. Fidler on a joint submission here. You seem to be citing their work on a couple of occasions in your presentation. But that's good, because it brings me to my question on this enforceability. Ms. Tellier is the first one, I think, who raised it. It would seem to me that what you're saying, and correct me if I'm wrong, is that if these arbitrations are not enforceable, they simply become null and void and they're nothing but a stepping stone to the court system for people. When they enter into an agreement to arbitrate, if it's not enforceable, it simply is



really meaningless because it's almost an assurance that it will go to the next level.

**Mr. Bastedo:** No, I disagree with that, sir. There's a fundamental misunderstanding here which a couple of people have put forward between the process of mediation and arbitration. We were at a mediation the other day. It was a very complicated mediation, and the mediator did not have arbitral powers. The problem was resolved. This happens every single day in the labour world and in all sorts of other worlds, and it doesn't mean that there will be no agreement and the case will not be over.

However, if people go to an arbitration, that means there is a contest, an adverse situation, which has to be resolved. Most arbitrations, as Mr. Wolfson pointed out, have a contest where one person loses. There has to be a method of enforcing them.

**Mr. Yakabuski:** I never mentioned the word "mediation"; I'm talking about arbitration. So if the arbitrations are not enforced, then they're not important because if they're not enforceable, it's almost an assurance that the parties will move on to another level.

**Mr. Bastedo:** Well, they'll go to court.

**Mr. Yakabuski:** That's what I'm saying.

**Mr. Bastedo:** There's no point in having an arbitration. There's no point in spending your money twice.

**Mr. Yakabuski:** That's right. That's precisely what I was asking. So if we don't have enforcement of this arbitration, then it becomes worthless.

**Mr. Bastedo:** That's right. I agree.

**The Chair:** Thank you very much.

## ADR INSTITUTE OF ONTARIO

### ONTARIO ASSOCIATION FOR FAMILY MEDIATION

**The Chair:** Our last delegation today is the ADR Institute of Ontario and the Ontario Association for Family Mediation. Welcome. You're last but not least. I only have one name listed here. If you're both going to speak, if you could identify yourselves for Hansard and the organization you speak for. After you've introduced yourselves, you'll have 30 minutes. If you leave time, we'll have an opportunity to ask you about your delegation.

**Dr. Barbara Landau:** I think I'm going to be the primary speaker, but I welcome my friend. I'll introduce her in one second. I'm Dr. Barbara Landau and I'm a psychologist and a lawyer, and I spend most of my life mediating all sorts of different disputes. I'm here on behalf of the ADR Institute. I'm a past vice-president and I'm a past president of the Ontario Association for Family Mediation.

My friend is Tami Moscoe. Tami, why don't you say a little bit about who you are.

**Ms. Tami Moscoe:** I'm a lawyer at Torkin Manes Cohen Arbus. I'm also on the board of directors for the Ontario Association for Family Mediation. I'm here to

support Dr. Landau in her submission and to be available mostly for questions.

**Dr. Landau:** I'd like to make my submission, then. I'd like to start by focusing on what the concern is with this legislation, what it is that this legislative amendment is designed to address. What I want to do is separate that out from the practice of arbitration that has been going on quite successfully for a number of years.

For a number of years, clients who are divorcing have voluntarily sought the assistance of competent arbitrators to achieve an efficient and effective resolution to their marital disputes. They selected arbitrators who were acknowledged experts in Canadian law and sought finality in a less formal, more timely and hopefully less adversarial process than the courts. The need for Bill 27 arose because groups wished to apply a diversity of religious laws to family disputes based on different rules, different values and different cultural norms from our Canadian context. The concern was that the values of gender equality and the best interests of children that are protected in Canadian and Ontario family law might not be protected in private arbitrations that are governed by other standards.

Family arbitrators in the past have largely been trained under the Canadian legal system, most clients have been represented by counsel at these arbitrations, and arbitrations are most often a voluntary choice by the parties. In the religious tribunals, it is expected that most family arbitrators will not be Canadian lawyers, most clients will not be familiar with their rights and obligations under Canadian law, most will not have counsel present, and there may be cultural or community pressure to use this process. In cases of domestic violence or power imbalances, women and children in particular may be at risk if arbitrators do not understand or appreciate these issues or the impact of fear and intimidation on participants.

In a desire to preserve the gains made in family law in Canada over the past 30 or more years, and to extend these gains to all cultural groups, we support the following policies—and when I mention a number of these things, there's going to be a great deal of agreement between me and the Ontario Bar Association, the ADR section of the bar and the speakers you've heard from, because we've all been in communication and sharing a lot of good conversations about these issues:

(1) Application of Canadian or Ontario law: We support the policy that those who select family arbitration do so voluntarily on the basis of informed consent and that they be governed by Ontario and Canadian law. Again, that's addressing the concern as to whether or not people are actually going to be selecting this process voluntarily and whether the arbitrators who will be acting have a knowledge of Canadian law. So this will be the protection.

(2) Contracting out of the right of appeal: This issue has generated considerable discussion, including among members of this committee. On the one hand, there is the need to protect vulnerable people—that is, those in abusive relationships or those who are not well informed about Canadian rights and protections—from awards that



do not reflect Canadian law or values. On the other hand, there is a need to allow informed individuals the right to achieve finality in their arrangements after separation.

To balance the concerns noted above, we recommend that where the arbitrator is either a member of the bar of any province of Canada or a retired judge from any court in Canada, the parties have the right to contract out of the section 45 appeal rights, but where the arbitrator is neither a Canadian lawyer nor a retired judge, they may not be permitted to contract out of section 45 appeals. This minimizes the chances of an arbitration award falling outside of Ontario or Canadian law.

Also, in my experience, many couples select arbitration or parenting coordination as a dispute resolution mechanism for a very narrow set of circumstances, or as a method of dispute resolution following a separation agreement or a court order. These arbitrations or parenting coordination present fewer concerns with respect to finality. Many of these participants have had ILA, are making an informed choice and would benefit from finality, as you've heard from a number of the previous speakers: Tom Bastedo, Lorne Wolfson and Nicole Tellier. Therefore, parties should be able to contract out of appeals in these cases.

1640

I want to just stop there for a minute. I think it's very important to think about the differences between arbitrations that are going to deal with all of the important issues, all of the substantive issues—financial, custody and access, property division—versus those that are a dispute resolution mechanism when people have already negotiated or mediated a separation agreement and have consciously chosen, following independent legal advice, to use arbitration as a narrow dispute resolution mechanism. In the case of parent coordination, the ultimate issues are not addressed. They are addressing the kinds of things that you heard about, and I've had all of those. I've had not only the dispute about who takes the kids to hockey but every manner of minor dispute that you can possibly imagine. I had one case that actually ended up going to court where the issue was three quarters of an hour a week with a grandparent covering while the parent returned from work. The father didn't like the mother's parents and so he decided that—I wasn't acting as a parent coordinator; I was acting as a mediator, who does not make decisions. Had I been acting as a parent coordinator, I would have had no difficulty resolving that dispute and I would have hoped it would have been a final resolution, rather than those people then going to court to deal with the issue of, really, "My mother-in-law didn't like me."

Independent legal advice: We believe that the key mechanism for ensuring voluntariness and informed choice as to process options and appeal rights, and an assessment of the capacity to make decisions without duress, rests in an enhanced ILA role. We recommend special training requirements for those offering ILA in these cases.

We propose that the lawyer giving ILA certify that:

He or she has explained the various process options and the client is choosing arbitration voluntarily. I think that's a very important point, particularly if we're talking about things that can have finality. People should be choosing the process voluntarily.

I also want to make the comment that I've heard a number of people use "mediation" and "arbitration" interchangeably. They are not interchangeable. In mediation, the professional helps people have a good conversation and the parties themselves reach a resolution. In arbitration, it's rent-a-judge; it's hire a person to make a binding decision. I think parties need to know the differences when they're making their choices.

We're recommending that he or she has screened for domestic violence and significant power imbalances. Such screening is to ensure that both parties are informed as to their process options and have the capacity to participate safely, voluntarily and without duress.

I'll make a comment here that I do not think it's appropriate for the arbitrator to be doing the screening. I'll be commenting on that again, but the arbitrator has to play a neutral role, has to play an impartial role and it would be inappropriate for the arbitrator to be the one screening in advance. I think that's best done at the point of ILA.

The third subpoint around the ILA is that he or she has to have explained to both parties the various appeal rights in the Arbitration Act and the consequences—this is really important—of waiving those rights. This important issue must be fully discussed with each party before entering into the arbitration agreement. I think it should be part of the agreement to arbitrate that people sign off that they understand the consequence of waiving any appeal rights.

My fourth point deals with screening for domestic violence and power imbalances. I've already recommended that the person offering ILA should be responsible for screening for abuse and power imbalances. I've said already that it's not appropriate for that to be done by the arbitrator, but we are recommending that the arbitrator should also attend training in domestic violence and power imbalances so that he or she is aware of the problem and can appreciate its effects on the parties and children. This knowledge is very important when arbitrators are making awards about parenting issues and financial matters. In cases of abuse, control and significant power imbalances, arbitral awards need to reflect an appreciation of safety considerations and an understanding that vulnerable individuals may give up legitimate and necessary financial rights in return for being permitted to leave an abusive relationship.

I really want to underline this point. I repeatedly see judges making orders around parenting issues where they haven't taken into account the fact that there is abuse. One case I'm thinking of right now is where the judge ordered that the wife go to the husband's home to pick the children up. She had already been abused, she'd already had a complaint around his abusive behaviour, and now she was asked to pick the children up at his



house. Of course, he abused her again, and the children were witnesses to this abuse.

In the case of an arbitrator who would be familiar with these types of concerns, hopefully they would take this type of information into account when they were planning the transfer of children. Also, they might be concerned about whether people were actually giving up their rights in return for freedom. I just think that kind of awareness is very important.

For screening for domestic violence, we're recommending that the parties have ILA before making the choice of a med-arb process. There should be a written agreement that clarifies under what conditions the process will become arbitration and what appeal rights are available. It's becoming more popular for people to choose to start mediating if they run into an impasse than to turn the process into arbitration. I'm concerned that at that point, we need the same safeguards.

We make specific training recommendations in our brief, which are more appropriately discussed as part of the regulations. I'd be willing to answer any questions about the training and responsibilities of the lawyers offering ILA or the arbitrator.

In addition, we're suggesting that clients selecting arbitration should be required to attend a family information session, such as the mandatory program offered in Toronto, prior to committing to the arbitration. We're not suggesting that that would be needed for secondary arbitrations or for a parenting coordination role as a dispute resolution mechanism set out in a separation agreement, court order or family arbitration award. Those people would not be required to attend a family information session. Those sessions are really helpful to people. It's just that at the current time, they are offered far too late in the process. Most people have already spent a year litigating before they get to the family information sessions, so they should be moved up, and particularly if people are selecting arbitration, they should go before they go to arbitration.

My fifth point is enforcement of family arbitration awards. You've heard a lot about this and I'm not going to spend any particular time on it. I generally support Tom Bastedo, Lorne Wolfson and Nicole Tellier saying that the enforcement provisions of section 50 are the simplest and most straightforward mechanism for enforcing awards.

My sixth point is the amendment to the Children's Law Reform Act. We support the recommendation by the feminist legal analysis committee—and I notice that Nicole has also proposed this—that the Children's Law Reform Act be amended to require that domestic violence and witnessing violence be considered factors in determining a person's ability to parent a child in custody and access disputes. I don't know why that has never been promulgated. It should have been. It's been on the books for years.

I want to thank you for your attention and I'd be pleased to answer—Tami, did you want to comment?

**Ms. Moscoe:** I just want to underscore two points. I've been listening for the last hour and a half or two, so I'm not going to repeat things that a number of my colleagues have said.

The first thing I want to do is just dispel a notion that arbitration is only there for the wealthy. I am a more junior member of the bar than a number of the lawyers who have already spoken, and I have to say from my experience that arbitration is often a much faster, much quicker and therefore much cheaper process.

**1650**

I don't know how many of you have been in a Family Court recently, but it can take up to two months, maybe three, to get your first attendance. You can go and sit in a court for eight hours waiting for a judge who doesn't have a chance to get to you, and have to come back four or five weeks later—and the clients, at least in our case, pay for that service. It can be a very slow and painful process.

I know my colleagues in Barrie are very actively opting out of the court process because of the difficulty getting family law dates, and I know that their mediation and arbitration services are quite busy throughout the different socio-economic levels, because the courts just aren't necessarily available.

The only other thing I want to underscore is that we don't think it is the intention of the committee to limit the ability and effectiveness of parenting coordination, but that's obviously a concern for the members of my organization, who are social workers, psychologists and lawyers but who do provide a very valuable service for people who have children and don't ever want to see each other again but who have to get through all the issues you've heard about over and over again.

Thank you.

**The Chair:** You've left about three and a half minutes for each party to ask you questions, beginning with the government side. Mr. Zimmer.

**Mr. Zimmer:** I'm fine, thank you.

**The Chair:** No questions? Okay. Mr. Runciman.

**Mr. Runciman:** I don't have a lot of questions either, because you were reinforcing many of the messages we've heard earlier today. We do appreciate your submission, though.

I'm just curious about one comment. I raised it earlier, and you have supported the previous recommendation, I think by the OBA, with respect to the discussion surrounding waiving the right of appeal. If I heard you correctly, you were supportive, with some qualifications with respect to a lawyer or a judge being the arbitrator. I am curious about that.

The previous witness, Mr. Bastedo, didn't reference that, and I didn't have an opportunity to ask him about it. I'm just wondering, because of the other protections that are being proposed by the legislation in terms of independent legal advice, why you feel that is such a necessary precaution. I did ask somewhat earlier about the numbers with respect to arbitrators who don't have those kinds of qualifications. I'm just curious about



whether you could expand on your concerns with respect to that particular recommendation.

**Dr. Landau:** I think this is the most difficult issue. I appreciate your struggling with it, because I think we've all struggled with it. The reason I've made the suggestion that I have—and I didn't do it lightly—was because I'm particularly focused on the issue of the population that is likely to be using religious tribunals and the likelihood that the people who would be acting as arbitrators in those cases may not be familiar with Canadian law.

I think most of the people you've heard from have been focused on traditional family law clients, and there has not really been a problem that the Arbitration Act needs to be fixed; I think it has been working really well. But I would tell you that, apart from parenting co-ordination, the majority of arbitrators are Canadian-trained lawyers.

**Mr. Runciman:** I understand where you're coming from. I guess the point that I think Mr. Wolfson made earlier with respect to a decision of an arbitrator that isn't in compliance with Canadian law is that there is still the right of a judicial review. Am I wrong on that? If that avenue is still available—I guess I'm a little reluctant to say you can only do it if you have a certain group of people who are looking at it.

**Dr. Landau:** First of all, I understand your concern. I think that the majority of religious arbitrations that are going to take place are not going to take place in a formal context. I think it's going to be an informal process. I don't think they're going to have formal agreements to arbitrate. I don't think they're going to know the difference. If this group didn't know the difference between arbitration and mediation, then they're not going to know the difference. I don't think they are going to—

**Mr. Runciman:** That was a bit of a backhanded slap, wasn't it?

**Dr. Landau:** No. I thought it was a compliment. I thought that if this illustrious group does not know the difference—

**Mr. Yakabuski:** We've figured it out, though.

**Dr. Landau:** Okay.

I have held a number of discussions with different religious communities. I actually brought people together from across the entire spectrum—from the Jewish community and from the Muslim community—and we have really had good discussions from all perspectives within those communities. They did not know the difference. They were interested to hear the difference. My feeling is that it's going to be done informally and people will not be aware of their appeal rights. Probably it's only going to be some time after a decision is rendered, when people who perhaps have not been in the country very long start to learn about their rights, that they may then need to look back on decisions that were made for them and want the right of appeal. My feeling was that this was offering an extra layer of protection for that population.

I really made this recommendation after thinking it through, because it's very hard to say there should be two

classes of arbitrators. Even though I have both sets of qualifications, I hate to say that psychologists can do this, but there's a limitation, and lawyers can do the other. But I really thought that would better protect those people who are not as well informed.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you, both of you. I'm so grateful to you, along with everyone else who has appeared here today. I agree with you, because it seems to me that the same coercive factors—cultural, power imbalances, etc.—that draw a party into a religious-based, faith-based arbitration are similarly going to be the factors that make that person comply with the award, even though the award isn't enforceable at law, which is why I'm concerned about this legislation, in that it doesn't address the fundamental issue of the prospect of injustice in faith-based arbitration.

But please, you've got to help me—I don't have a lot of time, and I'm from Welland; that's small-town Ontario.

**Dr. Landau:** But you are well known. You've put Welland on the map.

**Mr. Kormos:** But, Ms. Landau, I'm taking a look at this legislation. If an award is not based on Ontario law, to put it simplistically, then it's not an award. It's neither appealable nor enforceable, because your statute says that only a family arbitration award can be appealed. The law similarly says that it's not a family arbitration award if it wasn't arrived at by the law of Ontario or the law of another Canadian jurisdiction. It seems to me that that is not a concern. We don't have to preserve the right of people to appeal an award that isn't an award at law, because it's not enforceable; it's a nullity.

That then takes me to, if that protection is inherent in what is or is not a family arbitration award, then why wouldn't we reserve the right to educate—and I say that in the broadest sense—parties waiving the right of appeal, because they're only waiving the right of appeal of an award that is based de facto on Ontario law or the law of another Canadian jurisdiction?

I'm grateful to all of you because you brought me to that. Am I out of line in saying that? Am I way off base? I don't mind being on the left wing, but am I out in left field?

**Dr. Landau:** Well, we would hope so. I think that if there is not a valid award made, then there's no impediment to people going to court.

**Ms. Moscoe:** In fact, they can go to court and argue that very issue, right?

**Dr. Landau:** Yes. Let me just say that one of the things I really wanted to emphasize was the idea of this family information session. I think what's really needed is information for the community before they make decisions about process. Those family information sessions are really valuable and we have really underused them. I think what we're looking at is a process of educating the population so that they can then make better choices, informed choices.

I don't know whether I'm answering your question, but I wanted to say that I think that's where it starts. I



think people need to be more aware of the process choices. There can be an opportunity to find out about their rights under Canadian law, and then they're going to be better educated, plus the enhanced ILA will be a good thing. But I think that if right now we had the right of appeal that could be waived only if the arbitrator was trained in Canadian law, we would be offering an additional layer of protection.

**Mr. Kormos:** Thank you.

**The Chair:** We have time left, if you still have questions, Mr. Kormos. Otherwise, Mr. Zimmer has a question.

**Mr. Kormos:** Okay, if Mr. Zimmer wants to use it. Do you have a question?

**Mr. Zimmer:** My question was answered in the course of the comments on your question.

**Mr. Kormos:** I still hope, Mr. Zimmer, that we reflect a little bit more on why we would insist on a mandatory, unwaivable right of appeal when we don't have to concern ourselves with non-Ontario awards because they're nullities. They're not even appealable, because it

says that a family arbitration award is the only thing that can be appealed. Your amendments also say that if it's not done in compliance with Ontario law or other laws of Canada, then it's not a family arbitration award.

**Dr. Landau:** What we're talking about is a relatively new situation where we have an increased use of religious tribunals in our country, and we haven't had a lot of experience with it. I think that rather than risk having the right of appeal waived, we could have this extra hedge in order to provide protection for Canadian law.

**Mr. Kormos:** I hear you very, very clearly. Thank you.

**The Chair:** Thank you very much for being here today. We appreciate your delegation and your candid comments.

I'd like to tell everybody that this is the close of our hearings for today. I'd like to thank all our witnesses, all the members of committee and the staff for their participation in the hearings. This committee stands adjourned until 10 a.m. on Tuesday, January 17.

*The committee adjourned at 1703.*





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## Legislative Assembly of Ontario

Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 17 January 2006

# Journal des débats (Hansard)

Mardi 17 janvier 2006

**Standing committee on  
general government**

Family Statute Law  
Amendment Act, 2006

**Comité permanent des  
affaires gouvernementales**

Loi de 2006 modifiant des lois  
en ce qui concerne  
des questions familiales

other common law jurisdictions, such as other common law Canadian provinces, the United Kingdom, the United States and Australia—everywhere on earth but Ontario.

Marion Boyd, the former Attorney General who was appointed by your own government to advise you on this, was basically appointed to look into this matter and, after exhaustive legal research and hearings that were broad-based, and after hearing countless submissions, in a formal report concluded that there was not a single Ontario court case that enforced a religious court decision—basically meaning a Jewish court ruling, because those are the ones that have come before the courts—that has once breached or offended any Ontario law or public policy. No evidence of any such breach was found since enforcement of religious arbitration came into effect in Ontario in 1897, following the English Act of 1889. It was then that such powers of enforcement were granted to religious courts in this province.

To us, it's absolutely shocking that this Legislature would have such—I hate to use the word—contempt for its own legal system that it would consider legislation when there is no evidence for the need to ban the enforcement of religious family law arbitration with such a fine tradition, based on the findings of its own investigator, a former Attorney General and a woman who has a feminist background. We therefore agree with Ms. Boyd when she made it clear in her report, in accordance with the submissions of prominent legal authorities, that banning such enforceability would likely contravene, at least in application to any specific case that may arise, the rights of Jews under the Charter of Rights and Freedoms and render such legislation unconstitutional. In addition, the bill would so severely impinge on the law of contract that it is singularly unique to any common law jurisdiction in the entire world for its invasion of such rights.

The report of the former Attorney General and adviser to your own Premier actually quotes legal authorities. It cites a case in the Supreme Court of Canada called *Syndicat Northcrest v. Anselem*, 2004 SCC 47, where the court explicitly recognized the religious beliefs of individual Canadians as overriding the attempts of groups to suppress them. In that case—and I apologize for getting technical here, but this is important—the Court upheld the religious rights of a private condominium owner under the charter who was illegally denied permission by his condominium corporation to erect a Jewish religious structure called a sukkah on his balcony.

You may ask, “What does that have to do with this case?” Well, that case had to do with the rights of an individual in a private corporation. Imagine how much more applicable the charter would be to a public statute invading the rights of an individual who wants to go to a faith-based court, when you've had these rights for 130 years in this province. It is self-evident that the charter would be even more applicable to a government statute than to an illegal private condominium bylaw when such a public government statute so blatantly discriminates against a group of citizens precisely because of their religion.

## 1010

There is another problem you have. We have something called article 27 in our Charter. This particular article expressly dictates that the charter will be interpreted—will be, not may be—“in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.” This article distinguishes our Charter from the separation of church and state establishment clause found in the American Bill of Rights. Multiculturalism is not just going down to the Danforth and having souvlaki, dancing waltzes and enjoying ourselves at city hall on July 1. Multiculturalism is all about recognizing our differences, our rights. This is what it's all about. This is the true challenge we face. That's what article 27 is all about.

This is a significant section of our Charter, which imposes on the Ontario government that it have legal respect for the rights not only of Jews but of all Canadians for their respective traditions. I don't think, even without this particular article, that any United States or British government would even consider interfering in the rights of a citizen to contract for private arbitration of any kind so long as both parties freely consent to contract for it, unless there is existing historical evidence of harm to the public, of which Ms. Boyd found none.

Having said all that, we are suggesting to you that if you are going to pass this bill, which we've just told you has serious problems, what kind of bill are you passing? Do you realize there are no transitional rules in this bill? Has anyone looked at this bill carefully enough to realize that it impacts on the rights of Jews and others—not just Jews—in respect of arbitration rulings that have already taken place going back to 1897? We're talking about rulings that have not been incorporated into judgments. You have no transitional rules in this bill. Say a woman got a ruling for spousal support 10 years ago in a private arbitration ruling, and say that the arbitrator may possibly have mentioned in her ruling some case from Michigan or something—it doesn't have to be a Jewish case; it may not have anything to do with faith-based arbitration. Under your proposed legislation, that particular ruling is now void because you don't have any grandfathering provisions in this bill. Nobody has bothered to put them in. You haven't said that any legislation prior to the enactment of this bill is still okay. It's meaningless, because that particular decision of that arbitrator was not rendered in accordance with Ontario law. Any decision of any Jewish court going back to 1897 is void. Think what you're doing here.

This bill strikes at the very integrity of the historical right of contract, equal rights and an article of the Jewish faith to resolve disputes within their own courts if parties so desire and freely choose. If it is not amended or abandoned, the rabbinical council and these organizations are committed to defending the historic rights of the Jewish people in Ontario and the civil rights of all Ontarians to contract, no matter what their religion, since government has no business in the synagogues of the nation.



We also want to mention a question that comes to us all the time: If rabbinical courts already rule in accordance with the principles of Ontario law, what is the harm of Bill 27? The new law says that all arbitrations must be in accordance with Ontario law. So we're often asked, "If Jewish courts often rule within the principles of Ontario law or are similar to Ontario law, what's the difference anyway? Why don't Jewish courts simply agree with this law?" Let me answer that.

The rabbinical courts apply the principles behind the concept of equalization of family property, the child support guidelines, the best interest tests in custody/access cases and spousal support, and they apply them fairly, with all the trappings of due process. In fact, we'd like to say the Torah invented them. However, they use the process and principles of Jewish law and the tradition guaranteed by article 27 of our Charter in accordance with the principles of family law, but do they apply these principles exactly in the same way that the Superior Court judge does? No, of course not. That would be like saying that secular arbitrators act exactly the same way that judges do in all cases.

Rabbis are not lawyers, and their parishioners do not expect them to be. I think you are discriminating against Jews to say that they must act, and have their rabbis act, exactly in the same way that a person who goes through a secular arbitrator does. That's pure discrimination.

When it comes to the child support guidelines, they look at them very carefully. When it comes to a child's best interests, they often send a couple and their child for parenting assessments, the same way that the courts do. When it comes to property distribution, women are treated with the same community of property rules as the Ontario courts, but the method of calculation may not be exactly the same. However, financial disclosure is always required.

Lawyers are welcome when it is necessary, especially when the parties insist on their presence. Nonetheless, those Orthodox couples who want these rabbinical services not only hold them sacred, but they do not want the public glare and relative expense of the secular courts. For women, going to these courts is not just a matter of choice; it is a tenet of their faith no less important than any of the Ten Commandments, especially when they are dealt with fairly. For the Ontario government to ignore that sincerely held faith so frivolously is very curious indeed.

Secondly, family law arbitration is not denied by Bill 27 to secular couples when they seek to arbitrate family law matters privately. Non-Jewish private couples will also still be forced to arbitrate by Ontario law. So you may ask, why bother arbitrating at all under this bill, why not just let everybody go to the courts? Well, obviously, the answer is because people still want privacy. People will still want to arbitrate. So the answer to the question is that there is still a need for privacy.

Well, guess what? To Orthodox women especially, there's a concept of modesty. In our language, it's called "tzinyos"—modesty—and this demands privacy about

such delicate family matters, especially when the topic involves matters of intimacy, particularly on occasion when these problems can lead to the resurrection of the marriage, what we call "shalom bayis," or peace in the marriage. Alternatively, it may demand a divorce on terms, but the requirement of privacy when dealing with domestic and possibly intimate matters is crucial to a Jewish woman's spiritual makeup, something secular people sometimes forget or cannot easily understand.

This bill takes that right of spiritual privacy completely away from her, because she would find it difficult or perhaps impossible to agree to a dispute resolution forum outside of her own faith. Now, with Bill 27, that forum's decisions will no longer be enforceable.

Why does the Ontario government wish to deny the right of privacy to Orthodox Jewish women who wish to retain their desire to resolve matters of acute domestic embarrassment and intimacy with their rabbis, a process and tradition stretching back thousands of years?

The arbitrators, the rabbis of Orthodox Jews, wish to employ these traditions to interpret the principles of Ontario family law, and have been doing so without any problems since the English Act of 1889. If your committee recommends passage of this bill, Ontario will become the only common-law jurisdiction on earth to interfere with the sacred right of contract.

#### 1020

Lastly, before I turn the floor over to Rabbi Ochs, I just want to mention that it takes several years of post-graduate studies to become a rabbinical judge. These are highly educated gentlemen. The family law rabbinical courts I have attended over the past 25 years have 12 years of post-secondary school training in Talmudic law before being appointed. A number have university degrees, one of whom is a professor of philosophy at York University, Rabbi Immanuel Schochet; another is a law graduate, Rabbi Stern; another has a masters in psychology, Rabbi Taub, in addition to their vast Talmudic learning. Their whole purpose is to first attempt to achieve family peace, that is, marriage counselling, a sincere attempt by the rabbis to revive a marriage before they even begin arbitrating.

I need you to understand that to take away the power of the Jewish courts is to interfere with marriage counselling, because before they get to the arbitration step, the rabbis first attempt marriage counselling. Then they go to mediation. If that fails, then they take the step of arbitration. This is a process known as Jewish mediation-arbitration. Moses invented it thousands of years ago, well before it became popular as an alternative form of dispute resolution in this jurisdiction. The rabbis ensure that their arbitration agreement specifically excludes section 35 of the Arbitration Act to permit such mediation. Then, those issues that cannot be resolved through mediation are arbitrated in the rare case where the threat of arbitration does not work. This method is so successful that only a handful of cases are actually arbitrated in the Jewish courts. But if you take away the threat of arbitration in this process, the Jewish court and its powers



will be hindered. If rabbis are restricted to employing only Ontario law and not Jewish law and tradition in their deliberations, then their decisions can never be enforced because they are not Ontario lawyers, nor should they be expected to be Ontario lawyers.

The law can also mean process, the process of liberating Jewish women, among others in our community, to practise their faith to resolve their disputes as they see fit in the privacy of their synagogues. You interfere with a woman's right to privacy and you are on the road to tyranny.

Thank you. Those are all my submissions. I'd like to turn this over to Rabbi Ochs.

**Rabbi Mordechai Ochs:** I endorse the eloquent words of my good friend Mr. Syrtash. I appreciate this opportunity to address you.

First of all, I'd like to, in a way, present our credentials. Jews have always had a passion for justice, going back to the Biblical command, "Justice shall you pursue," which in our tradition we interpret as meaning that not just the goal and the end has to be just, but also the process has to be so.

There is an apocryphal story that is told about a person who once came to a judge and said to him, "You know, my grandfather knew your grandfather." The judge then turned to the other litigant and asked him, "Did your grandfather know my grandfather too?" And he said, "No." He said, "In that case, I disqualify myself from this case." The Talmudic story is somebody who lifted something that had fallen on the shoulder of the judge. He said, "I can't be your judge anymore. You've done me a favour."

*Remarks in Hebrew.*

"Zion has heard and rejoiced, and the daughters of Judah jubilate because of your system of justice."

Jewish women are not discriminated against. They enjoy the fact that they are treated as equals. That is the basic concern of all those who sit in judgment over them, who practise absolute justice.

If you find that there's a suspicion of a problem in the community, then the answer is not just sort of spontaneously to limit other rights. You can't address a problem by taking rights away from others, rights which have been enjoyed for over a century here and from time immemorial, and values that have been appreciated from way back when.

We're very concerned about the Charter of Rights. The government has taken steps to ensure that it is practised equally. But why be selective in the rights that you choose? It leads sometimes to conclusions, so that the legislation, in a way, goes far beyond the standards of modesty and public morality as accepted wide and large. If you are so concerned about pursuing that legislation, that the government has no right in the bedrooms of the nation, and beyond the bedrooms, in the boardrooms and who knows where else, why not also be concerned about the problem of freedom of religion? I must say, I'm very pained at the fact that very much what seems to be happening in our legislative system is that we are concerned

with freedom from religion more than with freedom of religion.

Let's just have a moment about how Jewish courts operate. A couple decides by free will to come and to be arbitrated. Our first approach is to attempt to establish harmony. Is there a possibility of reconciliation? If that fails, then we want to make sure that there's an equitable distribution of assets between them, that what is both possible on the one hand and what is feasible and proper should be performed.

I have a letter here which was sent to me. I'm just going to read you sections of it. I wouldn't bring it up, I'm embarrassed to read it, but I think it shows a case in point of how couples respond:

"Dear Rabbi Ochs,

"Thank you for arranging my get in such a thoughtful, caring way. You have renewed my interest in my faith and myself, and I have great words to share about you," and she goes on with a few more statements.

"I let you know that my ex, too, thought how alive and fluid is the Jewish religion and, in his words, you're a dear man. I'm shedding tears as I write, hoping that I can plan a life in which others think so well of me."

I don't know how many judges receive letters of this nature, but often it's a learning experience, and the parties grow. They have the right to be judged by people with whom they are in contact, to whom they look for spiritual guidance in their personal and business lives and in their interpersonal relationships.

If you find that there is a problem in the Jewish community, I'm sure that the present court system can deal with that without new legislation. If someone is afraid to approach the courts because of community pressure, the law does not solve that problem. I think that if one goes ahead with the legislation as presently worded—you've heard the expression where after an operation, they say, "The operation was successful. The patient is dead." I think what we will have here is that the issue is addressed, but democracy is dead.

**The Chair:** You have five minutes left, just so you know what time is left.

**Mr. Syrtash:** We're here for your questions, basically. We've said a great deal. We feel this is a terribly tragic mistake that's about to be made, unique in the world. We have a whole body of law that's gone on for literally thousands of years—in this jurisdiction, for 130 years—with no evidence provided by anyone that in this jurisdiction there has ever been a problem. We're asking you to ask us questions about our process. Ask us what problems, if any, we've ever created for the province. Ask us, because this legislation is supposedly designed to answer a problem that we say doesn't exist. We have a whole report from Marion Boyd that says that.

So we're here. Ask us whatever questions you have.

**The Chair:** You've given about a minute and a half for each party, beginning with Mr. Runciman.

**Mr. Robert W. Runciman (Leeds-Grenville):** Thank you for being here. You made some very interesting comments and perspectives that we haven't heard up to



this point. I guess what you're talking about is what you describe as a fine tradition which has worked well for 130 years, and essentially, "Why throw the baby out with the bathwater?" is one way of putting it.

1030

You believe there's a strong case to be made that this violates the charter. I'd like to hear, from your perspective, if you allowed the process to continue as it has for so many years, and you have other groups—in this case, we know that there are proponents of sharia, for example—who wish to exercise essentially the same rights that you've been exercising, how would you see that from your perspective?

**Mr. Syrtash:** I can't comment on other legal systems; we're here for the Jewish court. But I can say as a lawyer who has practised and who has done perhaps the most research of anyone in the province—I wrote a book called *Religion and Culture in Canadian Family Law*, published by Butterworth, and I assisted Ms. Boyd in her report—when I give you my own exhaustive research on this, I honestly believe, and I say this with the greatest of conviction and sincerity, that I have tremendous love and a great deal of affection for the Ontario Family Court. I think they're extremely well equipped. I've travelled around the world in the legal system, I've gone to a great number of conferences, and I can't tell you how much respect the Ontario Family Court has in the world and what great integrity it has.

There was only one time, and this was mentioned in her report, so I'm not just pulling this out of my hat, that the Ontario court was confronted with a situation where it had to deal with a sharia-like—that's a bad word—a situation where a religious court had to be confronted. It happened to be a Jewish court—it was an isolated situation—which had lost control of its process, in a case called *T. v. T.*; I won't give the names of the individuals. The issue had to deal with child support and access. The court had gone on way too long in its process, so a certain judge, Madam Justice Spiegel in that particular case, had decided to take the matter out of the hands of that court because it had gone on too long. It had its jurisdiction. It had what's called *parens patriae* jurisdiction, and that means that the court has jurisdiction over its own process in any case. That's already the law of Ontario. So it took the matter out of the hands of that particular court. Her Honour made a decision on access and made a decision on child support, and said, "We're taking the matter out of the hands of this particular court," and dealt with the matter.

What we're saying is, if ever a problem does arise, and it may well arise, whether it's our court—I doubt it, but it might happen again in the future—or a Buddhist court or a Muslim court or any court, this court is perfectly equipped to deal with it.

**The Chair:** Thank you. Mr. Kormos.

**Mr. Peter Kormos (Niagara Centre):** Thank you very much for your participation and valuable contribution.

First, Mr. Syrtash, your article in the *Lawyers Weekly* speaks as well of the prospect of this legislation making *de facto* arbitration awards void by virtue of them not having the certificate of independent legal advice attached. We'll be raising that tomorrow, Mr. Zimmer, in clause-by-clause, and we'll be questioning you about the impact as indicated by Mr. Syrtash.

I'm also concerned about the fact that in the legislation, one of the attractive qualities of arbitration—and you spoke to this—is that it's private. You can deal with things that you either don't want to deal with publicly or that you are emotionally, philosophically, spiritually incapable of dealing with publicly. Yet it seems to me that the enforcement process proposed—that alone in this legislation disrupts, as compared to using section 50 of the Arbitration Act. The enforcement process, which means suing for enforcement of the agreement, again undermines any privacy qualities to the arbitration, even under Bill 27. Is that a fair observation?

**Mr. Syrtash:** If I can make this comment: It's the very threat of enforcement that is useful for the religious courts, because it is not that you actually have to enforce, it's the fact that the power is there. It's very rare, I should tell you, that the Jewish religious court actually has a ruling that has to go to the next step where somebody says, "Here's the ruling of the Jewish court," and the woman has to go and take a child support order and have it enforced through a spousal support order. But the fact that the power is inherent means that a woman can go to a Jewish court and know that, if necessary, something can be done with that order. It's not that it's going to happen, but the fact that there's an inherent power there means that a couple has the confidence to know that something could happen.

**Mr. Kormos:** I asked Mr. Bastedo yesterday, and you confirmed what he said. My initial perception was that in a faith-based process, it would be the commitment that a party or parties have to that process—

**The Chair:** Can you make your question a little shorter?

**Mr. Kormos:** Yes, ma'am, thank you—that would be the most significant factor. In other words, it would be your adjudicative role that is more important than the enforceability. You're suggesting that that is not the case.

**Mr. Syrtash:** It's both. The fact is that without the threat of the enforcement behind the adjudicative process, it's going to be difficult for parties to even want to go.

**Mr. David Zimmer (Willowdale):** Both in your submissions this morning and in the article in *Lawyers Weekly* on December 9, which I read before the holiday season, the point is made about no transitional rules and no grandparenting provisions. While I appreciate that you have great difficulty with the entire piece of legislation, if I can just focus on these transitional grandparenting provisions. How would you see that operating—the transitional rules, the grandparenting rules—to alleviate some of the problems that you refer to, recognizing that you've got problems with the whole thing?



**Mr. Syrtash:** I understand. If you had grandfathering rules that said that up until royal assent at least, any decisions, whether faith-based or other, of any arbitrator could be enforced—so long as, of course, they were legally enforceable by operation of law up until that point—then it would be at least fair. But it is blindingly unfair now when people spend a great deal of money. I do a great deal of private arbitration, and even in Jewish courts, people spend sometimes thousands of dollars and invest a great deal of emotional time in private arbitration to come to some sophisticated orders.

**The Chair:** Thank you very much for your delegation today. We appreciate the time you spent here with us.

#### B'NAI BRITH CANADA

**The Chair:** Our next delegation is B'nai Brith Canada. Welcome. Thank you for being here today. If you could introduce yourself and the organization you speak for. When you do begin, you'll have 30 minutes. Should you leave time at the end, there will be an opportunity for us to ask questions.

**Ms. Anita Bromberg:** Thank you. I am with B'nai Brith Canada and I'm representing both B'nai Brith Canada and its agency, the League for Human Rights. First of all, I'd like to thank the committee for the opportunity to express what you will hear, which is our concerns about the proposed legislation.

I am Anita Bromberg, in-house legal counsel for the organization. If I may take a moment to introduce ourselves a bit, although hopefully most of you are familiar with our work, B'nai Brith Canada has been active across Canada, representing the Jewish community since 1875. Through its agency, the League for Human Rights, it has been well recognized as the foremost, if you will, Jewish human rights advocacy group in Canada. Our objectives include the protection of human rights for all Canadians, the development of positive intercommunity relations and the elimination of discrimination and anti-Semitism. We are dedicated to strengthening Canada's multicultural fabric, something that we in fact believe, as you will hear in my remarks, this proposed legislation fails to do.

1040

You'll be happy to know that as I was listening to the last presentation, a number of my comments have been said, and I'll try therefore to be brief and not redundant. But I must echo the words of the Va'ad and the respect that we have for the rabbis who operate the Va'ad. I sit before you not only as legal counsel for the organization, but I myself am an Orthodox woman practising and observing Jewish laws, and I can certainly echo the respect that women in the Orthodox community and the broader Jewish community have for the organization.

Before I turn to the more substantive concerns, I would like to take a moment to express our concern with the process as it has unfolded to date. The announcement, as made by the Premier, effectively ended a debate on a topic that in our surmise had just begun. The concerns of the vulnerable voices actually went unheard without in-

put from all concerned on the path chosen here and as reflected in the legislation. In fact, the input that we took great pain and time to give through the Boyd hearings was largely ignored, in our estimation, in the bill before you today. That, I suggest to you, does not speak well for the democratic process.

As to the proposed legislation, my intention today is really to restrict my remarks to the Jewish community model, which, as you've heard, has worked well for over 100 years in Ontario. This is the area within the organization's expertise and knowledge. In effect, the proposed amendments take away an accommodation—a right, if you will—extended to the Jewish community for over 100 years in Ontario. The right to have an Ontario judge enforce rulings from an arbitrator based on a private contract to arbitrate has been exercised by Ontarians without legal challenges for generations. The 1991 legislation simply codified certain procedures for enhanced fairness.

The Premier, when he made his announcement, said there shall be one law for all Ontarians. While that might be laudable in its simplicity, in fact, it's simply not the case. As you've probably heard from other presentations, arbitration often looks to other legislation, to other jurisdictions for guidance, and that's allowed. Why should it be any different in the religious format?

The connection with enforcement, as you heard again this morning, is very key. Looking to our legal system, it's certainly not foreign to understand that a tribunal may exercise its limited jurisdiction but know that it has the enforcement of a court behind it and how important that is. I'm often presenting at the human rights level, and while it's rare to actually go to the courts to enforce it, having that threat is certainly an important part of the enforcement process.

Simply put for our purposes today, our concern is that the bill takes away rights, an accommodation that has operated successfully within the Jewish community for over 100 years. The Jewish community, which has been, if we look at history, the most dominant in the use of this accommodation has therefore been the most unfairly burdened by the proposed changes and, if you will, discriminated against.

It's our view that the bill is actually contrary to article 27 of the Canadian Charter, something you've heard mentioned today, so I won't go over the wording of it once again. But it is our position, as we put before Marion Boyd at the time of her review, that under the Canadian Constitution, Jews—and indeed all faith-based or religious groups—are guaranteed the right to contractually arbitrate arbitration tribunals within family law and other matters so long as—and this is important—the participants do so voluntarily and with due process and fairness.

I will suggest in a moment that in fact such safeguards are already built into the system to ensure the voluntariness, the due process and the fairness. But for the moment the bill is, in our view, contrary not only to article 27 but in fact to directions that have been given by



our Supreme Court of Canada. Again, you've heard reference to that.

The material might have a typo. It's actually "Syndicat Northcrest v. Amselem," for your reference. In this case, the court clearly recognized that Canadians have the right to exercise their own sincerely held religious beliefs. This is a case that we at the B'nai Brith are quite familiar with because our own experts were interveners at the Supreme Court of Canada and successfully argued this point. As you've heard today, and I just want to re-emphasize, it does have ramifications. The Supreme Court of this country has recognized that there is a legitimate realm for sincerely held religious beliefs. I just want to quote from that case for a moment, if I may.

"What then is the definition"—say the justices in the majority decision—"and content of an individual's protected right to religious freedom under the Quebec (or the Canadian) Charter? This court has long articulated an expansive"—and I emphasize the word "expansive"—"definition of freedom of religion, which revolves around the notion of personal choice and individual autonomy and freedom." It then goes on to quote Judge Dickson in the case called "Big M." Judge Dickson first defines what is meant by freedom of religion under section 2(a) of the charter, so it stands as an important decision. The judges in the Supreme Court then take this section: "A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct."

The Supreme Court in the Northcrest case then concludes: "It consequently suffices that a claimant show that the impugned contractual or legislative provision (or conduct) interferes with his or her ability to act in accordance with his or her religious beliefs in a manner that is more than trivial or insubstantial."

It is therefore our view, keeping in line with what the Supreme Court of Canada has given us some guidance in, that every Canadian, every Ontarian, has the right to choose, of course, after the safeguards are considered, after ensuring that the participant has full understanding of the process. It's very important that that right to choose is not taken away and, in our estimation, unfortunately, that's just what the proposed legislation does.

I want to turn my remarks for a moment to some of the safeguards that have actually been removed by the proposed legislation. Let me explain that. The proposed amendments, in our view, actually take away safeguards that have been carefully built into the system, a system that has, as previously noted, worked well for the Jewish community over the last century and more. Indeed the courts were there, under the existing legislation, as a backdrop to ensure the fairness of the system. Under the bill, religious arbitration that falls under the very limited definition can in fact continue. But unfortunately, it will continue without the inherent safeguards already built into the system. In particular, I am emphasizing that the overview of the courts is taken away, which is no small measure.

Principles of fairness, equality and due process all are integral in the existing Arbitration Act. Indeed, the court has been given the power to set aside any award where a litigant has been treated unfairly or unequally; for example section 46. That's just one example of the safeguards that have been built into the act as it exists.

The experience of the Jewish religious courts has been that the courts will exercise as *parens patriae* supervisory, if you will, jurisdiction to override any unprincipled positions an arbitration panel might take. You heard from John Syrtash one example where such an exercise took place.

We recommended additional safeguards before the review held by Marion Boyd to further enhance the protection of the vulnerable. We've heard so many of the voices calling for that, so we crafted a number of protections that were designed, in our estimation, to further enhance what's already codified toward voluntariness and fairness. Unfortunately, as we look at the amendments, that's been largely left out.

#### 1050

Some of our amendments were not accepted and noted by Marion Boyd, and unfortunately these would still have a dramatic effect on the vulnerable in the communities that have spoken to you. For instance, if I can take one moment to mention that we strongly proposed that there be a well-designed system of independent legal advice—and yes, I note that that has been referred to in the amendments, but what has been left out is who's going to pay for that. Women from marginal communities and immigrant communities may not have the funds to seek that advice, so they may find their decision challenged because they did not seek that legal advice. It was our suggestion that if the government is really set, as they should be, on protecting the vulnerable, principles of legal aid should be considered and access to legal aid ensured to enhance the system. But that hasn't been dealt with, and in fact Marion Boyd indicated that that simply would not happen. That's unfortunate, if the aim is to protect the vulnerable.

The way the consultative process unfolded and then was abruptly halted has in fact, in our estimation, left the vulnerable simply unprotected, and many of the realities of the situation unexamined. We have heard in some of the submissions, particularly yesterday, that there is a controversy among a number of groups saying that they felt their concerns were not taken up by Marion Boyd, that there had been abuses, that there was a potential for abuses and Marion Boyd had simply "erroneously," as one presenter actually said, dismissed it. I certainly have looked at and heard a number of the presentations, and I would suggest that Marion Boyd in fact found that there were no abuses within Ontario. Partly, that's because, as we've maintained, the act and its present system have safeguards that were there, are there and should continue, but unfortunately the amendments don't take that into account and in fact cut off, as I've tried to point out, one of the most important points, and that's the overview by the courts. In essence, what you've done, what the bill



will do—and it has been echoed by other presenters—is push an underground economy even further. That has to be of great concern. So in the end, if the underground system develops and continues without the overview of courts, the enforcement of courts, then you've worsened the situation by not protecting the vulnerable, which is everybody's shared concern.

I just want to turn for a moment to a couple of the specific provisions in the legislation. It is our view that section 2.2, which contains the definition of what would be religious arbitration from that day passing forward, is unworkable. One of the words that I think shows where the confusion could come in: For instance, the section refers to the word "conducted." Does "conducted" mean a reference to substantive issues or, as is more commonly used in legal parlance, a reference to procedure? If they follow procedure of Ontario law henceforth, versus substantive issues, will that be a way to get around the definition? Is it going to be enough if, in a decision, an arbitrator dots his i's, crosses his t's, complies with Ontario law and then in the end says—and I'm being somewhat sarcastic; I'm trying to think of an example—"Thank God, we've reached an end"? So he's called on the blessing of God at the end of his decision, after being very careful. Does that mean that his arbitration has not been conducted exclusively within Ontario law because he's called on a religious principle, as minute as it is? These are the kinds of questions that we may never know until some challenges make their way to courts, and obviously it's something that we should be mandated to avoid.

You've heard some suggestions about the reworking of section 2.2, and I certainly leave it to this committee to consider if there is a way to rework it in such a way that allows for a more comprehensive system. We stand before you today quite concerned about the legislation and suggest that it's simply unworkable.

If, in fact, it goes through, another suggestion was made to you that regulations will have quite an important and profound impact on the workings of the legislation. We too ask that any enactment of legislation be made subject to consultation with community stakeholders. Some of the regulations will have profound effects, as you heard just now. For instance, they may have unforeseen retrospective grandfathering effects that will wipe out an arbitration that may have taken place 10 years ago but that a woman is just moving now to enforce. I would ask you to consider that.

I just want to bring my remarks to a conclusion so you do have a few minutes to ask me whatever questions you might have. On behalf of B'nai Brith, I would like once again to thank the committee for their time and would encourage its members to reject the proposed amendments pending further and thorough examination of the many issues that have been raised today.

**The Chair:** You've left about four minutes for each party to ask questions, beginning with Mr. Kormos.

**Mr. Kormos:** Thank you kindly. First, I feel compelled to respond to your comments about Ms. Boyd's report. What she in fact said was that the review did not find any evidence to suggest that women are being systematically discriminated against as a result of arbitration of family law issues. Clearly she was talking about the full range of arbitration; she made that statement. She was talking about systemic discrimination, and she was also talking about evidence. We all agree that because of the nature of arbitration and the lack of public supervision of it—I'm not suggesting that's right or wrong; I'm just making that observation—of course there's no evidence. There's anecdotal evidence, but there's no hard data.

Again I want to reiterate, as I did yesterday, that in my view Ms. Boyd conducted her role in an exemplary way. I don't agree with the recommendations she made, and my party doesn't agree with the recommendations she made, but that doesn't detract from the fact that she presented a valid option; it's as simple as that. I want to commend Ms. Boyd for the work that she did.

Be very careful, Mr. Rinaldi. To simply dismiss the opposing view is a very dangerous thing, especially in the course of what we're doing here. Ms. Boyd presented an option that has arguments to support it. New Democrats don't agree with it.

I want to talk to you, though, about the role of arbitration. Intellectually, I'm a fan of arbitration. But what we're concerned about here is—let's be candid—women who are coerced into so-called arbitration processes. Let's face it: The premise of arbitration is that you have two or more parties of free will, with reasonable balance in terms of power, who voluntarily enter into it. As soon as you've got a scenario where a person is being coerced into it, either through outright force or through cultural force, it's not really an arbitration anymore because it lacks that fundamental premise.

You understand what we're concerned about: How does one address those legitimate concerns? I'm convinced the act won't address it. It's just that the same cultural forces that compel women to participate in an unfair "arbitration" process are going to be the same cultural forces that compel them to comply with the ruling—they won't need courts. How do we deal with that? It has to be responded to. We can't put our heads in the sand.

**Ms. Bromberg:** I appreciate that, and it echoes my concerns. While I'm here to speak from a Jewish community's point of view—there have been no presentations to you directly on problems within the system; the voices have come from other community groups—I will say, as I tried to say in my remarks, that the act simply doesn't address it. If that's the concern that it attempted to address, the proposed legislation simply misses the mark. You've left women as vulnerable as they were and, perhaps, as I've suggested, even more so, by taking away a couple of the very effective safeguards that have been built into the system. That's my disappointment with the process.



1100

**Mr. Zimmer:** I have two questions: one about legal aid and one about transition or grandparent provisions. While I appreciate that you have difficulties with the whole scheme, with respect to transition and grandparent provisions, how would you like to see those evolve, if that were the case?

**Ms. Bromberg:** From a legal perspective, we certainly have a lot of experience on how to work to avoid a retro effect so a specific provision could be put in that it only applies to arbitration from this point forward. I think that a lot of concerns will arise when regulations are being passed, so having full consultation and examining carefully the ramifications of qualifications, training, record-keeping, attachment of independent legal certificates and all those issues will have to be carefully examined at the regulation stage. I can't imagine that our legislative wizards in the drafting department will have any difficulty finding a precedence that will avoid those effects. We've been building that into legislation from the beginning of our country, and effectively, too.

**Mr. Zimmer:** I was taken by your remarks on the legal aid issue. What is your experience with women of faith who want to access the arbitration system of their faith, in the Jewish system, if they are not of independent means or find themselves needing legal aid? How do you deal with people who don't have the financial resources to access the system now? How is that dealt with now?

**Ms. Bromberg:** They turn to their family and friends and beg for the money to help their families out. I volunteer, for instance, at a women's shelter that often has Jewish women who are escaping abusive situations. The community rallies around and assists them in whatever way we can.

In terms of the proposed legislation itself, I think we have to be cognizant. If the government is saying that they're passing this legislation with a view to protecting vulnerable women, the realities of these situations have to be examined. The realities are that it's largely vulnerable women who are going to find themselves without means and you're going to tell them, "By the way, if you do choose to go the arbitration route because of your faith-based beliefs," let's say for the purposes of this argument, "you're also going to have to get independent legal advice, which is going to cost you." The person will go to legal aid and be told, "Sorry, we can't help you." What will the woman do when she has a choice between putting bread on the table for her child or getting legal advice and worrying down the road whether or not the decision will be upheld? Obviously, the choice is simple for a mother. Therefore, she may not get the kind of advice that she needs to protect herself.

In the end, what has the government done to really protect the vulnerable? It's giving lip service, when the realities might suggest something quite different. That's our concern.

**Mr. Runciman:** Thank you for being here. I want to indicate our strong support for the position you've taken with respect to consultation and the regulations. I think

your comments related to the failure to consult earlier were well taken. Once Mr. McGuinty went back and forth on this and ultimately made a weekend decision—at that point, given the fact that you and others who've appeared before us have entered into that process in good faith, if you will, and then to have the door slammed in your face and then not provide you with that opportunity prior to the tabling of legislation in the House, I think, was truly unfortunate.

There's some indication here this morning with respect to the potential legislation violating the charter, being unconstitutional. Apparently, Ms. Boyd, in her report, made some reference to that as well. The reality is I think it's fair to say that, in some way, shape or form, this legislation is going to pass. I'm wondering if there has been any consideration on your part and on the part of your organization to pursue that legal course, if you will, at some point in the future.

**Ms. Bromberg:** At this point, no. We believe in the democratic process, and we're here to present our views and hope that they'll be listened to. But here's our concern: When you combine the bill with the procedure that was followed with the concerns that have been raised by the organized and not-so-organized religious Jewish community, we stand very concerned that the multi-cultural fabric of Ontario is weakened and not enhanced, that the direction of the Superior Court of Canada has not been followed here. The legislation simply attempts to say that religious arbitration will continue, but without the safeguards and the mechanism, the message is quite different.

**Mr. Runciman:** Can I get a quick comment on a number of other things? I know you referenced legal aid, which has been suggested by a number of other presenters. One of the elements was who was involved with respect to the ability to waive the right of appeal. There's some concern about that in the legislation, but some of the proponents of change have also said that if you restore the ability to waive the right of appeal, that should only be confined to arbitrators who are lawyers or judges. Do you have a view on that?

**Ms. Bromberg:** We maintain that to have true religious arbitration, there has to be a role for religious authorities to make the ruling. The problem that we have with the definition is when it wipes out the role of those religious leaders and imposes a legal standard that belies the very purpose of religious arbitration.

**Mr. Runciman:** Essentially, you have difficulty with that kind of a restriction. Are you supportive of continuing to have the enforcement provisions, as they currently stand through section 50, available through arbitration?

**Ms. Bromberg:** Yes, it being key, in our opinion.

**Mr. Runciman:** "Being key." I think most of the contributors would share that perspective. Thanks very much.

**Ms. Bromberg:** Thank you.

**The Chair:** Thank you very much for being here today. We appreciate your delegation.



## CANADIAN ISLAMIC CONGRESS

**The Chair:** Our next group and our last speakers are the Canadian Islamic Congress. Good morning and welcome. Are you both going to be speaking this morning?

**Dr. Mohamed Elmasry:** Yes.

**The Chair:** Okay, great. If you could identify yourselves and the group that you speak for. After you've done that, you'll have 30 minutes. Should you leave time at the end, we'd be happy to ask questions or make comments on your delegation.

**Dr. Elmasry:** Thank you. My name is Dr. Mohamed Elmasry. I'm the national president of the Canadian Islamic Congress. To my right is Ms. Uzma Ashraf. She is a member of the legal team of CIC, which is working on this bill.

I'm a professor of computer engineering and a father of four children, all professionals. The oldest is a crown prosecutor working for this government, which is trying to pass this bill. I've also been an elder, if you like, in my community. This means that I did mediation and arbitration for family matters, so I do come from certain experience.

I want to make general remarks, and Ms. Ashraf will actually read a position paper. Then I might add more before the questions and answers.

The first point I would like to make is that I did hear the two Jewish groups before me make an excellent presentation and, in the context of Jewish faith practice, I will submit to you that if you replace the wishes of Orthodox Jewish women with the wishes of Orthodox Muslim women, you would get a clear idea. Also, if you replace Halacha, which is Jewish law, with sharia, which is Islamic law, again, you'd get a fair idea about the terminology that we are talking about.

1110

The second point I want to submit to you is that there is already a partnership between the government of this province and faith-based communities in the case of marriage. This means that, for example, a Muslim couple will go to a licensed imam who can perform marriage, and that couple doesn't have to go to city hall to register that marriage. The marriage officiator is actually recognized by the province, and that person must perform the marriage according to the law of the province. There are certain credentials that that person has to have. This means that there is already a very successful partnership between the government and faith-based communities.

The third one is a general observation that the bill is a bad bill—you already heard that in many terms—and it was wrongly motivated by this government. You probably know the history: Many faith groups had the right of mediation and arbitration to be recognized by the courts, and then, when the Muslims came and said, "We ask for this also," they said, "No way. You guys can't have it. We're going to take it from everybody else." I think this really borders on a racist attitude from this government, and we reject it totally.

Equal rights is very important. In our position, you will see many advantages of regulating and recognizing mediation and arbitration, faith-based or otherwise. I want to emphasize that faith-based is one dimension of mediation and arbitration. It could also be civil-based, with nothing to do with any religion.

**Ms. Uzma Ashraf:** I want to just start off with the Canadian Islamic Congress's position. We support the implementation of faith-based and other civil mediation and arbitration as a legally recognized option for resolving personal and family law disputes. This alternative option for conflict resolution should fit within the framework of established Canadian principles of equality, fairness and justice.

As a little bit of an introduction or background, I'd like to say that in reality, Canadian society does not divide religion and the law; in fact, it does overlap. Laws regulate all aspects of life such that it is virtually impossible for legal doctrine not to overshadow religious practices and beliefs. The concepts of marriage and family are at the core of all religions. In our pluralistic society, it is only reasonable to expect faith-based panels to be involved in family and personal law matters and to work together with the judicial system in providing dispute resolution.

With the implementation of regulated, legally recognized mediation and arbitration processes, society will reap social benefits that cannot be experienced through secular courts alone. Moreover, fear of abuse and coercion within mediation and arbitration processes can be obliterated through elements of transparency and accountability that are inherent through the proper regulation of such processes.

Now for our recommendations and reasons. Firstly, third parties, which include faith-based and other civil resolution processes, should have legal recognition with respect to family and personal law disputes because they are more cost-effective and efficient and they introduce a hearing factor into many resolutions. Court proceedings can be lengthy and extremely costly for the parties involved. In contrast, along with being more timely and financially feasible, legally recognized mediation and arbitration processes offer a suitable alternative by alleviating serious case backlogs in the courts and by offloading severely taxed court resources. In addition, faith-based mediation and arbitration processes have a spiritual component inherent in family dispute resolution which essentially restores peace of mind to all parties who once shared harmony within the relationship. Unfortunately, the Canadian legal system provides little or no emotional or spiritual healing.

The second point: Legislation should validate family and personal law decisions made by faith-based and other civil arbitral tribunals. By implementing the recommendations of Marion Boyd, sufficient checks and balances are in place to ensure that a miscarriage of justice does not occur. Some of these examples—but there are certainly many more in her report—include the ability to set aside an arbitration agreement on the same grounds as



any domestic contract; signing a certificate of independent legal advice or an explicit waiver; having arbitrators develop a statement of principles of arbitration that explains the rights and obligations of the parties, as well as the religious processes that are available for achieving this resolution; and requiring specialized training and education for professionals engaging in arbitration.

The third point: Legally recognized and regulated mediation and arbitration processes are more effective and equitable than traditional legal proceedings because the implementation of mechanisms, as outlined in Marion Boyd's report, will ensure that the resolutions are less vulnerable to abuse. Specifically, mediators and arbitrators will be required to screen the parties in order to identify power imbalances and domestic violence by using a standardized screening process developed by the provincial government along with professional bodies. Therefore, recognized and regulated mediation and arbitration processes provide a proactive approach to minimizing injustice, whereas the courts simply provide a reactionary approach.

Fourthly, recognized and regulated mediation and arbitration processes are more effective and equitable than unrecognized and unregulated practices. The imposition of regulations formalizes an informal and non-standardized manner of decision-making that is already in practice, thereby ensuring that any resolutions of legal issues occur in accordance with the principles of justice.

In reality, very few arbitrated settlements end up before the courts because often parties feel empowered by resolving family and personal issues without judicial overshadowing. As a result, regulating faith-based and other civil mediation-arbitration processes provides legal protection for all parties involved.

Number five, as Canada is a self-defined multicultural society which consists of multi-faiths, it must respect the belief systems of all cultures and religions. Legalizing faith-based mediation-arbitration enables practitioners of all faiths to implement their values in dispute resolution while remaining within the boundaries of justice. Moreover, the right to use arbitration based on religious principles is protected under section 2(a) of the charter, which guarantees freedom of religion. Legally recognizing voluntary faith-based mediation and arbitration in actuality provides greater equality among Canadians of all faiths.

Briefly, my conclusions: In practice, religious and legal spheres do overlap. Specifically, the concepts of marriage and family are firmly rooted in religious doctrine, while the resolution of marriage and family disputes rests at the heart of family law. To affirm this fact can harmonize the interrelationship between Ontario laws and religious beliefs and customs. Faith-based mediation and arbitration has been successful in the past, such that individuals who have volunteered to resolve their issues in this manner have achieved pleasing results that have fallen within the boundaries of fairness and justice.

This is an important point that has already been mentioned by Professor Elmasry: Legally recognizing faith-based mediation and arbitration is not the originating stepping stone for allowing the infiltration of religion into the legal system. As a matter of fact, for years, faith-based communities have been given the right to perform provincially recognized marriages. Licensed professionals from religious communities are given full authority to officiate marriages according to the laws of the land such that couples who participate in these faith-based marriage contracts are not required to re-register their marriages with civil authorities. Hence, it appears only natural that the legal introduction of faith-based mediation and arbitration would appear to be the next logical step after the infusion of religion into the legal marriage process.

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In conclusion, I'd like to state that the CIC recommends that Bill 27 be rewritten to take into account the above recommendations for the common good of the people of Ontario. Faith-based mediation and arbitration can provide resolution for family and personal law disputes that are expedited, cost-efficient and injected with a dose of spiritual healing. With the appropriate precautionary mechanisms in place, religious minorities can achieve legally binding resolutions that are reached through the incorporation of their own religious beliefs while respecting principles of justice, fairness and equality.

**Dr. Elmasry:** I want to make some concluding remarks in the form of a question to Ms. Ashraf: I just want to ask you, as a Canadian-born Muslim woman and professional, would you actually go to your local imam in the matter of a family dispute?

**Ms. Ashraf:** Absolutely. Before even turning to the courts, that would be the first step that I would take, without a doubt.

**Dr. Elmasry:** What about the concern that some Muslim women would somehow be forced into mediation and arbitration against their will?

**Ms. Ashraf:** This is a voluntary process. As Marion Boyd pointed out in her report, there should be a standardized manner to determine whether there are power imbalances and domestic violence already occurring within the relationship.

**Dr. Elmasry:** But a Muslim couple can also be forced into the legal system and have a bad lawyer.

**Ms. Ashraf:** Absolutely. In the traditional court system, who's to say that a woman will not be pressured to resolve the matter and make a settlement that is not equitable or appropriate for her conditions?

**Dr. Elmasry:** Thank you.

**The Chair:** You've left about four minutes for each party to ask questions, beginning with Ms. Matthews.

**Ms. Deborah Matthews (London North Centre):** Thank you very much. I'm wondering if I can ask you to take a gender-based perspective—I think that's a bit where we were going—and just ask you if you think there is a gender consideration in this legislation.

**Ms. Ashraf:** Is there a gender consideration?



**Ms. Matthews:** Is the concern a gender-based one? I'm asking you to take a gender-based perspective on this legislation and the whole issue that led to it.

**Ms. Ashraf:** Okay. The way I see it is—actually, would you like to—

**Dr. Elmasry:** Yes.

**Ms. Ashraf:** I know he can't give a gender—

**Interjection:** Sure he can.

**Ms. Ashraf:** Well, I'll add some comments.

**Mr. Zimmer:** He has a gender.

**Ms. Ashraf:** But I mean it's obviously not mine.

**Dr. Elmasry:** I have two daughters and a wife.

Let me just give you some background. I've seen cases of divorce in this province which take years to finish. The winner is not really gender-based; the winner is the lucky person who can get a powerful and experienced lawyer. The settlement at the end could be in favour of the man or the woman; it depends on the lawyer they hire. This is a fact of life.

We're saying here that we have an opportunity to have a partnership between the government and the faith community, like in the case of marriage, where you'll actually have checks and balances. You've heard of the underground economy, and the model actually is there, except that the government has no say in what's actually happening in the back doors or the alleys with this mediation and arbitration. So this means that we can fix the system, but throwing out the whole system just because we cannot fix it—I'm submitting to you that you can make checks and balances; you can license these people. Make sure the tribunal for mediation and arbitration has a woman member; it must have a woman, so that you have the right background. It could be five, okay? When the parties come to mediation and arbitration, the mediator will be forced to take minutes of the meeting, to have witnesses and to ask the two partners, "Did you go to an independent legal adviser?" If not, they have to send these partners, or the man and wife, to get independent legal advice, putting in as perfect and robust checks and balances as possible.

I'm not an MPP and I'm not a lawyer, but I can tell you that in any system, be it electronics or computers or politics, you can have the checks and balances if you want to; it's the political will. Unfortunately, the government of this province doesn't have the political will and the guts to say that the Muslims of this country are equal to anybody else and they should have the same rights. It was a political decision, as you heard already, on a Sunday afternoon. The Premier of this province was under political pressure from the right and left and up and down, from women's groups and other groups, and he said, "No, we're going to throw everybody out of the system." That's stupid politics. This is a very opportunist way of doing politics in this province. I'm submitting, especially to the members of Parliament who are Liberal in this committee, to say no to this bill. Don't let only the opposition say no; you also say no. It's a bad bill. It doesn't solve anything. It only satisfies the ambition of the Premier of this province. Did I make myself clear?

**Ms. Matthews:** You certainly did.

**The Chair:** You have about a minute and a half if you do want to add anything to that.

**Ms. Ashraf:** Yes. I was just going to reiterate what Professor Elmasry said. A panel should not just be based on the arbitral decision of one individual. There should be many people on that panel; for instance, social workers, who would obviously be aware of social issues, domestic violence and abuse toward women. There could be a female arbitrator. There should be religious and community leaders involved. Again, there should be a choice between both parties to determine who should be on that panel so it's not something that will be enforced by one party upon another. Also, what I'd mentioned in my report with respect to Marion Boyd's recommendations, a standardized screening process would determine beforehand whether there is even a power imbalance. For me, again, as a female, I would feel very comfortable in this approach. In fact, I would feel that I have more autonomy and that I'm in more of a position to put my thoughts forward and get some sort of resolution that will be appropriate not only for me, but also for my partner.

I'd like to say, what checks and balances are in place within the court system? If we leave it all to the courts and leave it to plainly the letter of the law, there are no checks and balances there. I see it all the time in court. People submit to resolutions that are not appropriate for them, and then that's the end of the story. Sure you can appeal it, but there should be another option available for people. I think by putting the proper regulations and mechanisms in place, you can get a resolution that will not be based on any kind of adversarial precursor, and people will be happy. In fact, there will be other people looking out for the interests of each party. It's not necessarily the woman who is always the victim.

**The Chair:** Thank you.

**Mr. Runciman:** Both Mr. Yakabuski and I have some questions.

I'm just curious about what has happened in the past with respect to your religion and family-based disputes. There has been a process in place which hasn't been structured through legislation, but it has been a process that, I assume, from your perspective, has worked well. This legislation won't change that, will it? That process will continue to function.

**Ms. Ashraf:** Certainly. My understanding is, yes, any civil process, regardless of whether it's faith-based, can continue. But the fact is, what's the point in this process if a ruling is not even recognized by the courts? It's a waste of time, firstly, and it's a waste of the court's time as well. There is a backlog of cases and there are a lot of financial expenditures there.

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**Mr. Runciman:** So it's been your experience that it's been a waste of time up to this point with respect to the process; it has been unofficial, if you will?

**Ms. Ashraf:** No. I'm saying that if we can decide a situation and resolve it through arbitration or mediation,



then yes. If we come to a proper and appropriate resolution, for me, to go to the courts would be a waste of time. If it's not legally recognized and you have to go through the whole process again, certainly.

**Dr. Elmasry:** I just want to add that the government is throwing away an opportunity here. You're right that Orthodox men and women in any faith—mostly Jewish—will still go because of their conviction that this will provide a healing, possible success and so on. In many cases, it will stop there and all parties to the dispute will be happy with either successful mediation or successful arbitration.

But this will actually be pre-1991 because we're back again to square one. So we're saying that there is an opportunity for the government to go a step farther, the same as it does with marriage, by working in partnership with this faith-based group, because we are also concerned about our women and their rights and the abuses.

Who told you that we don't care? Sure, we do care. If you pass this bill, you're really throwing away a historical opportunity to regulate and recognize what is good for Ontarians.

**Mr. John Yakabuski (Renfrew–Nipissing–Pembroke):** That's part of what I was going to talk about, the fact that mediation is still available to anyone under any circumstances. If disputes can be settled before arbitration, all the better.

However, one of the things that was brought forward to us previous to the legislation, as legislators but also through the public domain, was the express concern of groups within the Islamic community that sharia law would place women in particular in a grave position of disadvantage if that law were applied in arbitral situations. That probably was one of the reasons for bringing about the legislation. We have heard that as well from deputations at this committee hearing—very, very strong, emotional submissions that have been made on behalf of Muslim women here in Canada. I would like you to respond, if possible, to those very, very deeply expressed concerns.

**Dr. Elmasry:** I can't actually read your name there.

**Mr. Yakabuski:** John is good.

**Dr. Elmasry:** Okay. John, we share the same concern. The only thing is, the solution is different. What you're proposing is a solution by taking the checks and balances, throwing out the recognition and regulation of the process, and by saying that this is the best approach. I am submitting to you that this is the wrong approach, because if you're really concerned about women who will be forced into mediation and arbitration, you are not really solving it by this bill. You know that. The only way to do it is to regulate and recognize the arbitration process, put in checks and balances. If you give me the time—you don't have to pay me consultation fees—I can actually send you big checks and balances. The panel has to be licensed, all of them; a woman must be on the panel; there will be minutes of all the meetings in a mediation and an arbitration. Most of the checks and balances were actually in the report which was com-

missioned by an independent consultant to this government.

This means there is a way of doing it. That's what I'm saying. What's missing in the process is the political will to really face the issue and provide a solution. This is not a solution.

**Mr. Kormos:** Thank you very much for your participation. I just want to comment, Chair, that this has been a delight, to have been able to participate as a committee member, because the quality of submissions has been consistently high and the civility in the context of what is a very contentious issue has been remarkable and worthy of acknowledgement.

Let's face it, Mr. Yakabuski: A settlement—mediated or not—that is unjust is no more preferable than an award by an arbitrator or judge that is unjust. There's nothing inherently good about a settlement if the settlement is obtained through coercion, through power imbalance, through any number of factors that result in an unjust settlement. That's why I know Mr. Zimmer shares my passion for the comments of Owen Fiss in his article against settlements in the Yale Law Review, a copy of which I have provided.

Look, you talk about marriage and family having their origins in religion—that's a position, an opinion that's debatable—but surely the state has taken over. Same-sex marriage did not have its origins in the faith communities, at least not the traditional faith communities. The state determined.

So what I put to you is this: People can choose whatever relationships they want. If people want to have a relationship with somebody who is on the list of consanguinity, they can, as long as they don't go to a justice of the peace or somebody and try to get married. If people want to have two partners, they can, but the state doesn't recognize that. So the state does determine what constitutes marriage—hence family—from the state's point of view, although people are free to pick any way they want to do it. Why, then, should the state not be the sole source of authority for what dissolves or terminates a marriage or family in terms of the public law and the public courts?

I also am very conscious of the fact that, unfortunately, in the divorce act, divorces have been turned into mere judgments, which secularizes divorce and diminishes the quality of the intervention. Remember the old decree nisi and decree absolute? That was a far more significant legal recognition of the dissolution of a marriage.

If the state has the sole authority to determine what constitutes a legal marriage and legal families, why shouldn't the state have the sole authority in terms of enforceability? Once again, just like people can choose whatever type of family or relationship they want, they can choose whatever type of dispute resolution they want, but why should the state enforce anything other than a state-structured dissolution?

**Ms. Ashraf:** Briefly, the state is fully responsible for enforceability, and I'm simply going to say, the charter,

section 2(a) and article 27, because our recommendations fall right under those headings.

**Mr. Kormos:** But people can use whatever—Mr. Zimmer and I, whether we're in a commercial relationship or whatever type of relationship, can choose whatever style we want to end that relationship. Why should we then call upon the state to enforce a resolution that isn't in compliance with the state's public laws?

**Dr. Elmasry:** This is a wrong assumption. The assumption that is correct is that all matters of mediation and arbitration will be within Ontario law, exactly like marriage now. For example, a licensed marriage officiated in any faith has to respect the family law of the province—you know: a certain age, a man cannot marry another woman if he's married already, etc. This means that the final authority is within the government; there is no doubt about it. The same thing is involved in mediation and arbitration in the case of divorce. The ultimate arbitrator, if you like, is actually the government; it's not faith-based.

**The Chair:** Thank you very much for your delegation. We appreciate your being here today.

This brings to a close our hearings for the day—actually all of our hearings—and I'd like to thank the witnesses, the members and the committee staff for their participation. I'd like to remind all members that amend-

ments to Bill 27 should be filed with the clerk of the committee by 5 p.m. today, as agreed to by the subcommittee. The committee now stands adjourned.

**Mr. Kormos:** On a point of order, Madam Chair: Number one, we simply want to encourage members of the committee to understand that the 5 p.m. deadline is advisory. Number two, Mr. Kaye, in a conversation I had with him—I appreciate his making best efforts to provide us with as much as he can in terms of bullet-point summaries of the submissions. If we could get those at some point today, it would be helpful to us and, more importantly, to legislative counsel.

We don't sit and write these amendments ourselves. Mr. Zimmer sat and typed out this legislation himself; I know he stayed up late, late at night. But we don't write our amendments; we rely on legislative counsel. In fairness to them, Mr. Kaye's collaboration is appreciated.

**The Chair:** That's been noted.

**Mr. Yakabuski:** Do we vote on that?

**The Chair:** No. I think Mr. Kaye has already shown initiative and provided some information, and we appreciate that he has.

This committee now stands adjourned until 10 a.m. on Wednesday, January 18, for clause-by-clause consideration of Bill 27.

*The committee adjourned at 1141.*











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Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 18 January 2006

# Journal des débats (Hansard)

Mercredi 18 janvier 2006

**Standing committee on  
general government**

Family Statute Law  
Amendment Act, 2006

**Comité permanent des  
affaires gouvernementales**

Loi de 2006 modifiant des lois  
en ce qui concerne  
des questions familiales

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 18 January 2006

Mercredi 18 janvier 2006

*The committee met at 0958 in room 151.*FAMILY STATUTE LAW  
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT DES LOIS  
EN CE QUI CONCERNE  
DES QUESTIONS FAMILIALES

Consideration of Bill 27, An Act to amend the Arbitration Act, 1991, the Child and Family Services Act and the Family Law Act in connection with family arbitration and related matters, and to amend the Children's Law Reform Act in connection with the matters to be considered by the court in dealing with applications for custody and access / Projet de loi 27, Loi modifiant la Loi de 1991 sur l'arbitrage, la Loi sur les services à l'enfance et à la famille et la Loi sur le droit de la famille en ce qui concerne l'arbitrage familial et des questions connexes et modifiant la Loi portant réforme du droit de l'enfance en ce qui concerne les questions que doit prendre en considération le tribunal qui traite des requêtes en vue d'obtenir la garde et le droit de visite.

**The Chair (Mrs. Linda Jeffrey):** Good morning. The standing committee on general government is called to order. We meet today for the purpose of clause-by-clause consideration of Bill 27, the Family Statute Law Amendment Act, 2006. We will now commence clause-by-clause consideration of the bill.

The first motion, Mr. Runciman.

**Mr. Robert W. Runciman (Leeds–Grenville):** Thanks, Madam Chair. I think everyone has copies of these, hopefully.

I move that clause (b) of the definition of “family arbitration” in section 1 of the Arbitration Act, 1991, as set out in subsection 1(1) of the bill, be struck out and the following substituted:

“(b) is conducted in accordance with the law of Ontario or of another Canadian jurisdiction and is compatible with the values entrenched in the Canadian Charter of Rights and Freedoms;”

**The Chair:** Any discussion or debate?

**Mr. Runciman:** Would you like me to speak to that briefly?

**The Chair:** Yes.

**Mr. Runciman:** Essentially, I think it addresses the concerns, the catalyst behind the government proposing these changes, but not as harshly, if you will, in terms of

the language embodied in the bill before us. If you read this section of the bill, it uses much stronger language: “is conducted exclusively in accordance.” I think “exclusively” is a word that caused some concern among a number of the people who appeared before the committee. I think this amendment could address that concern but still accomplish the objective the government wishes to achieve through Bill 27.

**The Chair:** Mr. Zimmer, do you want to comment?

**Mr. David Zimmer (Willowdale):** No comment.

**The Chair:** Mr. Kormos?

**Mr. Peter Kormos (Niagara Centre):** The New Democrats have been pretty clear about our position in this matter: We believe that family law has sufficient societal importance that it should be performed by public courts utilizing the public law. That of course does not prohibit anybody from using any other dispute resolution process that they choose and, in terms of the process, incorporating whatever standards they choose. But don't come to the public courts, then, for enforcement.

In many respects my comments on this amendment are moot, because at the end of the day we disagree with the government's direction. We don't think it addresses or solves an acknowledged problem that women and children have in some communities, including some faith communities, whereby their status is lesser, as we perceive it, than it would be in the norm in Ontario and in Canada.

But, having said that, obviously this flows from the participation of the Canadian Jewish Congress and indeed was one of their major recommendations. For those who support this legislation—and I presume the government continues to support the legislation—I put to you that it is a valuable consideration. I hope that Mr. Zimmer is going to comment on it. If he doesn't, his colleagues wouldn't know how to vote. I would hope that Mr. Zimmer is going to comment on it so that at the very least the Canadian Jewish Congress, who did a great deal of work in preparing their submission, understand why their proposal is not taken into consideration, is not being incorporated by the government.

There was a day and a half of incredibly valuable discussion in this room. I'm just so pleased I had a chance to be on this committee for this bill. From the beginning to the end, the quality of the debate, in my view, was stellar. It was a pleasure to participate in the committee, because that doesn't always happen, as you well know. Again, I have a lot of intellectual disagree-



ments with a lot of the contributions made. So be it. It was a valuable process.

I think the Canadian Jewish Congress's utilization of this phrase is valuable and I just don't understand why the government would insist on exclusivity when in fact, at the end of the day, Mr. Zimmer, that could well be problematic. You can well anticipate litigation—think about this, Mr. Runciman—should there be even the most obtuse and gratuitous comment by a judge that would permit somebody to argue that he or she, as an arbitrator, didn't exclusively use Ontario legislation. Furthermore, common sense dictates that A, B or C be the case. Well, I right off the bat can see lawyers arguing, "Whoops, there you go. This is not a valid arbitration award"—because this is what it's all about—"because the judge didn't exclusively utilize the law of Ontario or another Canadian jurisdiction." Think about it. Furthermore, common sense tells me that X, Y or Z should be the case. "Maybe the arbitrator adjudicating the matter is no longer relying exclusively on Ontario law. He" or she "is relying on common sense. Oh, my goodness, what a shocking proposition."

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I believe that the government has set a standard here with "exclusivity" that is going to cause grief down the road. I think that Mr. Runciman's motion attempts to address that. Whether it does it fully or not I'm not prepared to judge. I think it's a valuable amendment and I would ask the government to please, at the very least, consider it. Perhaps the government would defer the vote on this matter until they've had an opportunity to reflect on the significance of it and the impact of the language they have now.

It's a very, very high standard, "exclusive." I understand what the government is trying to do, but they've set a very high standard that could well cause grief down the road. Mr. Zimmer is a clever, capable lawyer, and 10, 15 years from now, when he resumes his practice of law after serving as Attorney General in perhaps the final year of this government, I can see Mr. Zimmer in Superior Court, arguing that the arbitrator didn't exclusively use Ontario law, and that is to say he didn't only use Ontario law with the exclusion of all other standards.

We know, Mr. Zimmer, that adjudicators in our criminal courts, in our civil courts, public adjudicators and judges apply the law, but they also apply a whole lot of other standards. How often do we hear a judge say, "And furthermore, society dictates; furthermore, it is a value in our society; furthermore, common sense dictates"? We hear that every day from judges doing good jobs, applying the law of the land and rendering judgments that are unassailable. Here you talk about "exclusive." I think that's a very interesting use of the word, and also a very dangerous course of action. You're going to invite litigation. Are you trying to make things easier for people in family disputes? Far from it, sir.

Thank you, Chair.

**The Chair:** You're welcome, Mr. Kormos. Any further speakers to this amendment?

Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Mr. Runciman.

**Mr. Runciman:** I move that subsection 2.2(1) of the Arbitration Act, 1991, as set out in subsection 1(2) of the bill, be struck out and the following substituted:

"(1) When a decision about a matter described in clause (a) of the definition of 'family arbitration' in section 1 is made by a third person in a process that is not conducted in accordance with the law of Ontario or of another Canadian jurisdiction or is not compatible with the values entrenched in the Canadian Charter or Rights and Freedoms,

"(a) the process is not a family arbitration; and

"(b) the decision is not a family arbitration award and has no legal effect."

Essentially, Madam Chair, this was an amendment to bring this section into compliance with subsection 1(1) of the bill related to the amendment I proposed earlier which has just been turned down by the government members of the committee.

**The Chair:** Any further comments or questions? Seeing none, all those in favour—

**Mr. Kormos:** Chair, please. Again, this is a proposition that's certainly worthy of some consideration. Here's Mr. Runciman incorporating into the bill the charter standard. What could be more Canadian than that? Think about it: Mr. Runciman wants the bill itself, the legislation, to indicate clearly that determinations, adjudications, shall be in compliance with the Charter of Rights and Freedoms. This is mom and apple pie.

I say, are there people in this room who don't believe in the Charter of Rights and Freedoms, such that they would oppose this amendment? Are there people in this room who would not want to see those fundamental rights and values contained in the Charter of Rights and Freedoms? Are there some in this room who would want to say that those fundamental values and rights contained and entrenched—our own Canadian Constitution; this really was a turning point in Canada's history. Are there people who would not want to see that articulated in a bill where we're talking about family dispute resolution and the rights of women and children?

I happen to be a fan of the charter. I happen to be somebody who believes strongly in its value. By the way, I also believe in maintaining or retaining the non obstante provisions. How else do we preserve public health care, for instance, in view of the recent judicial determinations around public versus private health care? I think it's shocking.

At first I was concerned about the non obstante clause, but I was much younger then; I really was. I thought the charter is the charter is the charter and rights are rights. But I think there's a significant difference between individual rights and societal collective rights. They're both rights, but in the case of public health care, for instance, it's a societal collective right to preserve that institution. I just wanted you to know that I believe that to abandon the non obstante clause is a very dangerous, reckless, un-



thinking, knee-jerk, irresponsible approach to our society and to our future. How could any rational person—

**The Chair:** Mr. Kormos, are you speaking to the amendment?

**Mr. Kormos:** Yes, ma'am.

**The Chair:** Okay.

**Mr. Kormos:** How could any rational person advocate the elimination of the non obstante clause, especially in view of the recent experience we had with the courts around private health care, other than a person whose motive, for instance, was to facilitate the growth and development of private health care to compete with public health care?

Again I urge—I exhort—the government members on this committee to at least give this amendment some consideration. Please, in the interests of those people who are going to have to rely upon this legislation, should the government ever proclaim it, give some consideration to this and perhaps defer the matter until you've had an opportunity, Mr. Zimmer, to consult with advisers and counsel at the Ministry of the Attorney General down the road on Bay Street. Please, perhaps just indicate with a nod, "I will agree to the vote on this matter being deferred," until you've had a chance to contemplate the amendment further. Thank you, Chair.

**The Chair:** Mr. Yakabuski.

**Mr. John Yakabuski (Renfrew–Nipissing–Pembroke):** I concur in many of the things Mr. Kormos has said. I might not put them in the same way; in fact, I would find it impossible.

Certainly, on the amendments Mr. Runciman has proposed here—the first one and this one—what I find troubling is that in no way do they weaken this bill. In fact, they make the bill far more workable, far more defensible and more realistic to implement and deal with the inevitable situations that will arise by replacing that exclusivity with the words "conducted in accordance with."

Right in this amendment is the Canadian Charter of Rights and Freedoms. I do find it troubling that the Liberal members on the other side did not support amendment number 1. Therefore I find it highly unlikely that they'll be supporting amendment number 2, which has right in its verbiage the protection entrenched in the Canadian Charter of Rights and Freedoms. I would ask them to reconsider their thought process on these amendments.

Thank you very much, Madam Chair.

**The Chair:** Mr. Runciman.

**Mr. Runciman:** I appreciate the contributions of the members as well. I just want to say, without getting into the merits of the charter and those kinds of arguments, that I think what was persuasive for me was essentially the presentation by the Canadian Jewish Congress, and the delegation we heard yesterday, which I think was a little less amenable to compromise, but coming from essentially the same direction. I thought the Canadian Jewish Congress, although very upset and deeply offended by the lack of consultation with respect to the

decision the Premier made on a weekend and moved ahead with Bill 27 without talking to any of the stakeholders who had gone through the Boyd process, which they felt was a good-faith process—ultimately, I think quite properly, felt they were slapped in the face by the government of the day.

**1020**

Given the fact that rabbinical courts, from all reports, have worked quite well—no real concerns have been brought to our attention about the operation of rabbinical courts under the legislation, or even before the legislation for that matter, but certainly what's relevant here is under the current act—I felt they came here prepared to compromise. They didn't have a long list of demands. They didn't say, "Throw this legislation out." They certainly expressed their concerns about it, but they recognized the realities as well with respect to the government's position and came up with some realistic recommendations—only two—to this committee, which I felt were both realistic and a real move toward a compromise solution that they put forward.

One, of course, was the inclusion of the words I've proposed here through amendment today, and the other is coming forward later, dealing with a requirement for consultation. It's a very a reasonable approach, and it is truly regrettable that the government members are not seeing fit to support that reasonable approach.

**The Chair:** Ms. Matthews.

**Ms. Deborah Matthews (London North Centre):** I'm delighted to respond. The first point I really am surprised that I need to make but will make is that the Charter of Rights and Freedoms is in fact Canadian law. Our bill, by definition, includes the Charter of Rights and Freedoms. There is no need to add that amendment because the bill already includes the Charter of Rights and Freedoms and all other Ontario and Canadian law. As I said, I'm surprised that such well-informed people across—

**Mr. Runciman:** The former Attorney General proposed it.

**Ms. Matthews:** —really don't understand that it is Canadian law, the Charter of Rights and Freedoms.

**The Chair:** Less cross-chatter, please. Let the member talk.

**Ms. Matthews:** The second point I want to make is that we have actually given this some considerable thought. We examined the amendments overnight and did—

**Mr. Yakabuski:** Did you get any sleep, though?

**Ms. Matthews:** Not as much as I would have liked—and did in fact consult with some of the people who presented here specifically on this issue. I'm happy to read to you what we received from one group, and it reflects the opinion of other women's groups. This is from Pamela Cross, the legal director of METRAC: "We do not support the amendment proposed by the Conservatives to alter the definition of family arbitration. As we stated in our submission, we think the current bill provides the appropriate definition for this term and we do not want to see the requirement that arbitrations be



conducted exclusively in accordance with Ontario and Canadian law altered in any way.” That is an opinion we concur in. Therefore we will not defer the vote on this. We’re prepared to vote on this right now.

**The Chair:** Any further comments or questions?

All those in favour of the amendment? All those opposed? That’s lost.

Mr. Runciman, you have the next amendment.

**Mr. Runciman:** I move that paragraph 2 of section 3 of the Arbitration Act, 1991, as set out in subsection 1(3) of the bill, be amended by adding “and” at the end of paragraph iii, by striking out “and” at the end of subparagraph—

**The Chair:** Mr. Runciman, just for accuracy, after the word “and” you just said “paragraph” instead of “subparagraph.”

**Mr. Runciman:** Sorry—“and” at the end of subparagraph iii, by striking out “and” at the end of subparagraph iv and by striking out subparagraph v.

I didn’t have an opportunity, because of time constraints, to have a chat with legislative counsel with respect to this amendment, but I believe it’s achieving what we hope to recommend to the committee, as recommended by a number of presenters; that is, retaining the ability of parties who opt to enter into arbitration the ability to waive the right of appeal. I think there were some very solid arguments made with respect to this, in the sense that most of the contributors who have had extensive experience in dealing with arbitration felt this was an important element with respect to finality and recommended the strong consideration of retention of this right, requiring the agreement of both parties, of course. We support it, and hopefully the amendment I’ve just read addresses that.

**Mr. Kormos:** I want to speak to this as well. I hope people understand that some of the people who appeared before this committee: Mr. Bastedo, Mr. Wolfson, Ms. Fidler the psychologist, Barbara Landau—Landau and Wolfson are the authors of the major authoritative text on family mediation in Ontario and Canada. We were blessed with some of the best minds in the area of family dispute resolution over the course of Monday and Tuesday, here in this committee room—we really were—and I’m just so grateful that I had a chance to participate in this committee for that very reason.

But when Ms. Fidler, a psychologist—you’ll remember she did the coordinating; she’s a brilliant, brilliant person and a leader in these matters internationally—and Mr. Wolfson, again an internationally acknowledged leading expert in family dispute resolution, raise the concerns they did around the appeal issue, along with others—Ms. Tellier as well; you will recall she’s a lawyer who is actively involved—I’m going to be quite candid in indicating that I had not considered that as problematic before their discussion, as I do now, especially as I came to understand more clearly that based on the definition—this is something, again, where these participants were very, very helpful—if an arbitration award under this legislation is not exclusively based on Ontario law, or the

law of another Canadian jurisdiction, so say Ontario law, it is not an arbitration award. It’s a nullity. It doesn’t exist. It’s zero. It can’t even be appealed. The argument will be, should a party try to appeal an award that can be criticized or attacked for not being based exclusively on Ontario law, that an appeal court can’t even hear the appeal because the law says you can only appeal a family arbitration award. This sounds bizarre, but I was pleased that this was acknowledged, and clearly acknowledged, by the experts as being the case.

So the right of appeal—whoa, wait a minute. What right of appeal? Because you attack an award that is not based exclusively—and this is where the word “exclusive” is going to cause grief, because unhappy litigants are going to be attacking award after award on the basis of its not being exclusive, by virtue of a single word being uttered by an adjudicator, by an arbitrator. So it’s only bone fide judgments that are based exclusively on Ontario law that can be appealed. That’s fair enough, in and of itself, except that this is what arbitration is all about. Arbitration is your getting to choose your adjudicator. People have any number of good or bad reasons for choosing adjudicators, but they choose adjudicators, they choose arbitrators based presumably on that arbitrator’s familiarity with that area of law. Mr. Bastedo spoke to that, amongst other things.

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There are certain arbitrators who do some types of arbitrations. Again, in the construction industry, arbitration is very, very common and frequently used. There are some advocates of the profession who say that an arbitrator does not have to be familiar with the trade and that an arbitration is an exercise that’s aloof from any knowledge. But by and large, it’s acknowledged that one of the factors that people utilize in choosing an arbitrator is their expertise, their reputation for fairness, their reputation for even-handedness—all of these considerations.

What does that say, then, about appeal? I agree with the advocates of arbitration as an alternative to the public courts that, because of serious problems in our court system, a judge who primarily deals with criminal law can be thrust into a Family Court the next day. That was some legislation where we—Mr. Zimmer wasn’t here yet; Mr. Runciman was here, though. Remember the debate, Mr. Runciman, about taking away the exclusive Family Court judges and their roles? We were concerned about the erosion of the special expertise that Family Court judges at the provincial level acquired. Upon reflection, I still think it was a wrong move, and it’s been demonstrated to have been a wrong move.

So there is the luck of the draw around picking a judge. Look, judges don’t have the luxury of time that an arbitrator has. An arbitrator has his or her billable hours. They have the luxury of their clients’ pocketbook, I suppose.

I was interested in the phrase “litigation bullying.” Again, you talk about trying to address power imbalance in family dispute resolution. Denying the opportunity for litigants in an arbitration setting, where you’ve always



said it's going to exclusively be Ontario law, which is a very high test, very readily attacked, very vulnerable, and litigants who get to choose their own arbitrator, to deny them—because you're presuming you've got ILA, independent legal advice. It's a strong focus, and nobody disputes the need for ILA, although I'm going to speak to that when we get to those sections, because the practicality of the real world is far different from the little intellectual exercise here in this room—far different.

But I'm impressed by the observation about litigation bullying. I understand—and I hope I'm correct. Again, as I've said so often, if I'm wrong, there are people here who will leap at the opportunity to say so. But I understand that it's usually the party with more power, financial resources, who has the capacity to engage in litigation bullying—you know, appeal it just to drag that so-and-so through another round of litigation. Understand that the appeal is to the Superior Court, those very courts that people are trying to avoid in the course of private arbitration because of their huge backlogs, because of the inability to choose your adjudicator. So a nasty litigant—and I don't have to tell you that in family matters things get nasty—can make the other party pay and pay and pay, and that's when you have injustices. Oh, I'm such a fan of Owen Fiss and his commentary on ADR. I sent a copy of the Yale Law Journal article to Mr. Zimmer because I knew he'd enjoy it. But that's exactly what Professor Fiss is talking about when he argues against settlement. It's at that appeal level—think about this, Mr. Runciman—that a powerful litigant can force settlement on the less powerful litigant, more likely than not the woman, because she can't afford to sustain the appeal. Do you understand?

Appeals are very expensive, because now you're into the course of paying for transcripts and lengthy, lengthy, lengthy legal analysis on the part of lawyers, on the part of counsel as well as on the part of the court. It's at this appeal level that weaker litigants can be forced into unjust settlements, because they simply give up. I don't know about your constituency offices, but in my constituency office I get people in there on a weekly basis, every Friday that we've got appointments for me, showing me the legal bills around family litigation. To spend \$50,000 or \$60,000 per party on family litigation is not unusual at all, and it can quickly go up into the six digits. Quite frankly, arbitration doesn't necessarily—it certainly doesn't eliminate the legal bills, and if it does reduce them, in many cases it's only marginally.

I get constituents, and I trust you do too—if they don't talk to you, they're talking to your staff—who come in with legal accounts of \$30,000 or \$40,000. I don't begrudge the lawyers who maintain firms and staff and all the overhead and get paid for what they're doing, but they've run out of money. Do you know what happens in civil matters when the lawyer can no longer collect his or her fee? What's the motion they bring before the court: to be removed as council of record, Mr. Zimmer? Have I got that right? Mr. Zimmer is not even nodding. It's a motion. I believe a lawyer will bring a motion to the

court to be removed as solicitor of record when his or her client has run out of money. That's what happens. It's over.

Again, I'm not saying to deny the right of appeal, but if the government is creating legislation that addresses power imbalance with independent legal advice, why not then give those same litigants—and if it creates that incredibly high standard—exclusively Ontario law? Why not at least give litigants the opportunity, with ILA, with independent legal advice, to say, “And furthermore, the resolution imposed on us by this arbitrator is going to be filed,” so that that other party can't continue to drag this matter through the expensive, slow and incredibly painful—those folks who were here each could have spent a day with us, easily. You understand that this is not just about spouses; this is about children. The incredible impact that these tortured and agonizing processes have on kids is profound.

I became persuaded, very much so, by the experts who were here that giving litigants who have ILA, giving litigants who have representation, giving litigants who have the opportunity to choose their arbitrator the opportunity to similarly say that this will be final and binding—I think that's a good, important thing, and I say that the government is defeating its purpose. It says it's going to give people the opportunity to use these private courts; I'll have more to say about that later, because that's what they're creating. We're not talking about poor people here; we're talking about people with means. Poor people down where I come from are those poor women lined up in Family Court, unrepresented or using the duty counsel that happens to be available that day. This does nothing to alleviate the grief that those parties to family disputes suffer, nothing at all. Let's make that very clear. This is for people with means.

It also, quite frankly, is for people who have a sufficiently amiable relationship with their spouse/partner that they can agree to arbitration. The people in the really violent, unhealable and dangerous relationships are not going to sit down and agree to arbitration, by and large, unless they're motivated by factors like privacy: if they are celebrities who don't want their cocaine habits to become public knowledge, or their assets or mistresses or boyfriends or girlfriends and their assignations in cheap hotels down on the Lakeshore strip to become public knowledge. I suppose if they're rich, they're doing it at Sutton Place, not down on the Lakeshore. That would be the motivation of some parties.

**The Chair:** Can you bring it back to the motion, Mr. Kormos?

**Mr. Kormos:** Yes, ma'am. Well, no, very much so.

**The Chair:** I sense a little deviation here.

**Mr. Kormos:** What, the business about assignations? That's life, Chair. I'm sorry.

**The Chair:** It's a deviation.

**Mr. Kormos:** It's not deviant; it's perfectly human behaviour. It happens. Trust me.

But, look, the parties who can agree to arbitration have retained some level of relationship. We're not speaking



to the needs and interests—and again, I'll talk about women whose relationships are so dangerous and volatile that they can't sit down with their spouse and say, "Let's go to arbitration, honey." They've got to go to the Family Court and file the papers and wait and wait in those dank, mouldy hallways.

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I say that Mr. Runciman has made a very important contribution to this process. Far be it from me to suggest that it's the opposition's job to do the government's job, but from time to time, intellectual integrity compels us to perform that role. This amendment makes the bill better, friends. It's intellectually sound, it's policy-sound and it addresses some of the ill that you purport to be speaking to.

**The Chair:** Any further discussion on this motion?

**Mr. Zimmer:** Let me say this in response to the remarks from the members of both parties, in particular Mr. Kormos's party. One thing this bill really does, in keeping the appeal rights in place, is protect poor and vulnerable women at the arbitration stage of things. We are trying to make a level playing field at the arbitration stage. The fact of the matter is that appeals of arbitration awards are relatively rare and infrequent. Keeping this appeal provision strikes the proper balance by removing the threat to vulnerable women who can't afford or don't engage counsel at the arbitration process, to ensure that if something comes off the rails at the arbitration process, there is an appeal to a judge who will ensure that any decisions, anything that happened at the arbitration stage, were in fact made according to Canadian law and that all the other aspects of this bill are in place.

We've had extensive consultation with various women's groups as late as yesterday afternoon and over the evening. They see the appeal provision as key to levelling the playing field in the arbitration process. This will make the arbitration process more attractive to women. It will ensure that if things do come off the rails at the arbitration stage, there is another look at it by a judge.

**Mr. Kormos:** Again, arbitration is no more about poor litigants than the doctors up on Yorkville Avenue who do the liposuction for rich, fat people. Arbitration is about people who can afford to pay their own way; that's number one. Number two, and you said it again, the appeal process is important in case the arbitration goes off the rails and isn't conducted in accordance with Canadian law. That's the whole point. If it isn't conducted in accordance with Canadian law, you can't appeal it because it is not an award; it's merely null and void. If the argument is made that we're appealing this award because it's not in compliance with Canadian law, the appellate court will have to say, "I'm sorry, we can't hear the appeal because you can only appeal family arbitration awards, and it's only a family arbitration award if it's conducted in compliance with Canadian law."

**Mr. Brad Duguid (Scarborough Centre):** That's not true.

**Mr. Kormos:** What do you mean, it's not true? Of course it's true. Read the bill, Mr. Duguid, and listen to the experts. Listen to Mr. Bastedo, listen to Mr. Wolfson, who were here yesterday.

**Mr. Duguid:** I'm watching the experts shake their heads.

**The Chair:** Committee, I'm not going to allow debate back and forth. Mr. Kormos, you have the floor.

**Mr. Kormos:** Thank you kindly. Read the bill. It's only an award if it's made in compliance with Canadian law, and it can only be appealed if it's an award. Therefore, a decision that's not in compliance with Canadian law is not an award and cannot be appealed. It is a nullity. Am I saying that's a good thing about the legislation? No, but I neither drafted it—and I don't criticize the drafting people, because they follow orders.

I can hear the rolling of eyes when those—Mr. Runciman, think about this. You've been in the cabinet; you've had to work with these people. When those poor civil servants were given their marching orders after Mr. McGuinty, on that Sunday afternoon, blurted out his ill-thought-out response to the issue, civil servants who were compelled to draft this legislation—again, you can hear their eyes rolling.

I'm not saying that it's good legislation. Look, I've been pretty consistent in that regard in terms of being critical of it, but I've just been trying very hard to understand what kind of beast the government is giving birth to here. It is very problematic in this whole issue, because we're not talking about denying the right to appeal. We're talking about—this is what Mr. Runciman's amendment does—giving parties who are free agents—because that's the whole basic assumption: If they are free agents, it's not an arbitration. The premise of arbitration is that two people willingly and with some meaningful parity in terms of status and power engage in the process, because you can't compel somebody. As a matter of fact, what this bill—in some circumstances, like in contract situations, you can compel somebody to go into arbitration if, for instance, you decide in your agreement that that's how you're going to resolve disputes. I'm going to get to that when we reach the point where you talk about not being able to commit to arbitration agreements prior to the dispute arising, another very problematic part of the legislation.

So I hear you, Mr. Zimmer, but again I say to you that your analysis of the bill, if you say that the appeal is there to address awards that are not in compliance with Canadian law, is inaccurate. It's incorrect. I say that we're not talking about, nor does this amendment talk about, eliminating parties' right to maintain the right to appeal. We're talking about giving them the right—dare I say it? I'll use the government's language. It's about choices. How often have we heard that in the government's spin around so many issues? It's giving them the choice to say, "And furthermore, this is going to be the end of our dispute. We're going to walk away from this, and we can carry on with our lives."



That is so important, as I understand it from reading the literature in family litigation. It's important in other areas of litigation too, but it's so incredibly important, and not just for the spouses but for the kids. This takes such an incredible toll, family disputes and the litigation, on children. It's something that we, just because of the time constraints, weren't able to—it probably isn't germane. Some would say it's not relevant to the actual specifics of the bill.

So I disagree with Mr. Zimmer in that regard. I simply want to point that out. I'm not going to belabour the point.

**The Chair:** Thank you.

**Ms. Matthews:** I just wanted to address the issue of finality that was raised by some of the people we heard from in the hearings when they were arguing that we do allow parties to waive the right to appeal. I think it's important that we all understand that there's already a very narrow ability to appeal now. It's 30 days, and it's on a point of law. So in a process that has probably gone on for many, many months, adding a 30-day appeal period doesn't really, in any material way, affect that finality that people really do want to have when they're closing one chapter of their life and moving on to the next. So I am comfortable with not allowing the right to waive appeal because it's such a narrow window. It has to be within 30 days and it has to be on a point of law, so I'm comfortable with that.

I've also received a note from the experts here that I'm going to try to make sense of. Basically, I'm told by the experts—and I am ill-equipped to get into a legal argument with a lawyer—that the appeals will occur. Your argument, I'm told, is wrong. If they're not in compliance, they'll lose the appeal, but the appeal will still be heard. In order to find out whether or not an arbitration is in compliance, in accordance with Ontario and Canadian law, that appeal is actually a necessary step. So I'm comfortable—in fact, I think it's important that we retain that appeal period.

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**Mr. Runciman:** I guess your partisan experts are much more well informed than someone like Mr. Bastedo, who has been operating in this area for so many years.

I was taken by Mr. Zimmer's comments that, "Late into the night, we consulted with women's groups, and they assured us that this was the way to go." I think that speaks volumes about this government's response to this: It's all political. They're not looking, in my view, in terms of what's really going to make the arbitration system work for people in this province. This is a political exercise, which was exemplified, I think, by those comments and by the Premier's Sunday afternoon comments to a reporter and the failure to consult thereafter.

The Premier and his party talked about a democratic deficit prior to the election and since, and we've seen very little of an attempt to address it. What we've tried to do from the official opposition perspective here is put forward some amendments that will improve the legislation and make it more attractive for families and

individuals in this province to access it. We've listened to the experts. We've taken the advice of experts, people who have no partisan axe to grind and are not here to support one party or another; they're here to put their experience on the record and offer the best possible advice to us as legislators to make those ultimate decisions. Of course, you've closed your ears and listened to a few special interests with respect to not only how the legislation was drafted but your failure to listen to the people who donated their time, if you will, to provide us with their best advice. That's truly unfortunate.

At the end of the day, we are probably going to support the legislation. We supported it on first and second readings. But I think the way you're going, the path you're taking here, is really going to make arbitration much less attractive, and it will be up to a future government to clean up this mess, apparently, because you certainly don't seem willing to address very valid and legitimate concerns.

**Mr. Yakabuski:** I'm not a lawyer either, and I don't have any legal experts passing me any notes either. But based on the testimony we heard over the last couple of days, and perhaps your legal experts could comment on that or give you a note that would help you out on that, my understanding, based on what they've said, is that even if these amendments were passed which gave the parties the option or the right to waive their right of appeal in arbitration awards, it in no way nullifies anyone's right to appeal under an error in law, in applying Canadian or Ontario law. It only gives them the right to waive the arbitration itself—you can't say, "I don't like the award; therefore, I'm appealing it." They still retain the right, even if these sections—and maybe Mr. Kormos would have a better understanding of that. Under all circumstances, including if the right to appeal was here, or the right to waive the right of appeal, they could still appeal under the Canadian law that the Ontario law was not applied or the Charter of Rights was not applied in arriving at that award—not the award itself, not the terms, but if they didn't do it with respect to the law. That's basically what you were talking about in your response.

**The Chair:** Mr. Kormos?

**Mr. Kormos:** I defer to Mr. Duguid.

**Mr. Duguid:** My understanding is that what we're talking about here would depend on what was agreed to in terms of what they're waiving, but if you waive your right to appeal, you waive your right to appeal, plain and simple, so you waive your right to appeal even on a legal basis. Now, you could write a waiving that would say, "With the exception of a legal basis," but that's not necessarily going to be the case.

**Mr. Yakabuski:** That's not our understanding.

**Mr. Duguid:** That would be ours.

**The Chair:** Can I just remind everybody that we are talking about the third motion. I want to make sure everybody is staying on task as to what's on the table.

Mr. Duguid, if you're done, Mr. Kormos?



**Mr. Kormos:** Note makers and memo writers and all inclined. This is what litigation is about. There are going to be disagreements; there are people who are going to say yes and there are people who are going to say no. However, it's about the enforceability. If an award is not made in compliance with Ontario law, then it's unenforceable. The issue is enforcement, and we are going to get into that when we come to the enforcement sections because there are amendments with respect to that as well. There was interest expressed in the enforcement mechanisms. The enforcement requires suing. You have to litigate on the award. That's one opportunity that people will have to contest the award as not being an award because it's not made exclusively in compliance with Ontario law. It's not enforceable.

There are appeals and then there are appeals. There is an appeal pursuant to the legislation, which requires that it be a valid family arbitration award before it can be appealed. There are, of course, going to be what some people will call appeals; to wit, motions to set aside an invalid order, a declaration. That will be seen by some as appealing the award, but in the instance where an award is not made in compliance with Ontario law exclusively, the real process, according to many, would be to move to set it aside if you wanted to act unilaterally or simply contest the enforceability of it. This is not a non-litigious process that you've created, Mr. Zimmer—far from it. The arbitration is just the beginning of a long, messy process on the whole basis of what the award entitles you to. All the award does is entitle you to sue the other party on the basis of the award. Courtrooms, once again, the palais de justice across Ontario, with their huge lineups and waiting lists and beleaguered staff—those poor OPSEU members who struggle with caseloads. Mr. Runciman, I'm sure, shares my concern for those poor OPSEU workers who struggle with those huge caseloads in those courts.

Trust me, if this bill passes, this will be litigated and there will be appeals upon appeals about the very nature of the words in this bill.

**Mr. Zimmer:** I've given to the clerk of the committee two letters; one from Pamela Cross, legal director of METRAC. Opposition members have copies of that letter now. I just want to point out that, with respect to the Pamela Cross letter—and I won't get into the letter, but just the first sentence. This was following the two days of hearings, and it points out that METRAC supports all of the government's proposed amendments. On the second letter, from Kelly Jordan from the Ontario Bar Association, it's important to note that she writes on behalf of three sections of the Ontario Bar Association: the family law section, the alternative dispute resolution section and the feminist legal analysis section. They are supportive of the government's amendments at this stage after the two days of hearings. I assume Mr. Bastedo is a member of the OBA also.

**Mr. Kormos:** There's no two ways about it, Mr. Zimmer: You have fans out there. There are people who admire your zeal in the performance of your duties. I

happen to be one of them. I just find you an incredible performer in this role of parliamentary assistant, and I wish you well and look forward to seeing your career progress.

**Mr. Runciman:** It surprises no one that the OBA supports this, that lawyers are supportive of more opportunity for appeals.

**The Chair:** Any further discussion or comment? Seeing none, all those in favour of the motion?

**Mr. Kormos:** Recorded vote.

1100

### Ayes

Kormos, Runciman, Yakabuski.

### Nays

Dhillon, Duguid, Matthews, Rinaldi, Zimmer.

**The Chair:** That motion is lost.

Mr. Runciman.

**Mr. Runciman:** Okay. Hopefully I'm on the right one here, Madam Chair.

**The Chair:** Number 4.

**Mr. Runciman:** I move that paragraph 10 of subsection 46(1) of the Arbitration Act, 1991, as set out in subsection 1(7) of the bill, be struck out and the following substituted:

"10. The award is a family arbitration award that does not comply with section 59.6 of the Family Law Act."

Madam Chair, I believe this amendment and the following amendment both deal with the enforceability provisions. I believe there may be a government motion addressing this as well. I'm not sure, but I'll leave that to Mr. Zimmer to outline, if indeed that's the case.

It's a response to the concerns expressed by a number of witnesses related to enforceability, that there should continue to be the right to apply, under section 50 of the Arbitration Act, for the enforcement of an award. We think that makes eminent good sense, and we're supporting it through this amendment.

**The Chair:** Comments or questions?

Seeing none, all those in favour of the motion? All those opposed? That's lost.

Mr. Runciman, you have the next motion.

**Mr. Runciman:** I'll read it into the record, but essentially, I think it deals with the same issue.

Subsections 1(8), (9) and (10) of bill (sections 50 and 50.1 of Arbitration Act, 1991)—I shouldn't be reading that, I guess.

I move that section 1 of the bill be amended by striking out subsections (8), (9) and (10).

**The Chair:** Comments or questions? Mr. Runciman, did you want to speak to that?

**Mr. Runciman:** I believe again this deals with section 50 and the ability to ensure enforceability of an arbitration award.

**The Chair:** Any comments or questions?



**Mr. Runciman:** Just to read something from Mr. Bastedo that I have here in front of me, currently an arbitrator has “the power to order the production of documents in the course of a hearing,” and if the order isn’t followed, it can be turned very easily into a court order by section 50 of the Arbitration Act. The order is then enforceable through the contempt provisions of the rules of civil procedure.

Under the bill as it’s currently worded, and as pointed out very eloquently by Mr. Bastedo, it will now be impossible to seek this sort of order. The interlocutory or interim awards which are continuously made through an arbitration process wouldn’t have an effect. But he certainly addresses this as a very significant concern of his, and I think the government members should take this opportunity to appreciate that concern and address it through the amendment.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** I’m concerned about the concern raised about the bill being silent as to interlocutory or interim orders. I think everybody understands how important they are in any litigation process, but especially in family, when you’re talking about preserving property, right? You don’t want one of the parties selling off all sorts of assets. That’s one of the areas where, as I understand it, interim orders are made, ordering a party not to sell the motor home, not to sell the Rolls-Royce, the Mercedes-Benz, what have you; the protection of children; the exclusive possession or interim exclusive possession of a matrimonial home.

I would hope Mr. Zimmer would help us in this regard, because this is exactly what Mr. Runciman spoke to in terms of Mr. Bastedo speaking to the handcuffing of an arbitrator in terms of interim interlocutory awards. Or perhaps ministry staff, and there are a couple of them here, could assist us. Where does the authority for an arbitrator to make an enforceable interim interlocutory award come from? Is it by virtue of the present Arbitration Act? Are Mr. Bastedo’s concerns grounded? I don’t know the answer to that, and I dearly want to. Can anybody help?

**The Chair:** Mr. Zimmer, did you want to respond?

**Mr. Zimmer:** We’re mindful of the lawyers’ concerns and we have an amendment that will address this.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** What can I say?

**The Chair:** “Trust us”?

**Mr. Kormos:** Yes. Oh, great: “Hi. I’m from the government and I’m here to help you”—the world’s third-greatest lie.

**The Chair:** Any further comments or questions on this motion?

All those in favour? All those opposed? That’s lost.

Mr. Runciman, you have a motion.

**Mr. Runciman:** This is number 6?

**The Chair:** Yes.

**Mr. Runciman:** I move that section 58 of the Arbitration Act, 1991, as set out in subsection 1(11) of the bill, be amended by adding the following subsection:

“Consultation

“(2) Before a regulation is made under this section, the Attorney General shall engage in a public consultation about the content of the proposed regulation.”

Again, this was suggested by a number of the presenters, I think primarily by those who were offended by the fact that the Premier made a weekend announcement. This followed eight months of consultation by Marion Boyd before she made her recommendations, which they had participated in in good faith. In their view, her recommendations were rejected by the Premier in a very cursory way because of political heat, and then a failure to consult prior to the tabling of Bill 27 in the Legislature. I think they’ve made a very reasonable request. Because the regulations could have enormous impact on how arbitration functions in the province in the future—setting aside faith-based arbitration; we’re talking about arbitration of all these kinds of family law matters—I think it’s important that the government accept this recommendation.

This is not precedent-setting. A research officer, assisted by one of his colleagues, has provided us with an extensive list of examples of acts that have required consultation with the public before regulations are made under the legislation. I’ll just put a few of them on the record: the Commitment to the Future of Medicare Act, 2004; the Environmental Bill of Rights, 1993; the Fiscal Transparency and Accountability Act, 2004; the Greenbelt Act, 2005; the Ontarians with Disabilities Act and the Quality of Care Information Protection Act. Those are examples of where the current government has incorporated a requirement for consultation before regulations become finalized.

I think this is a very appropriate request and amendment, and hopefully the government members will be receptive to at least one of the friendly amendments that the opposition has made here this morning.

**The Chair:** Ms. Matthews.

**Ms. Matthews:** I’d like to comment on Mr. Runciman’s comment that this bill was introduced without consultation. I think we’ve heard that too many times for me to sit and listen to it one more time without commenting. I don’t know about you, but I got more calls on this issue in my constituency office than I have on any other issue. There was broad consultation. There was more public debate on this issue than on any other legislation I can recall in the two years since I was elected. There was enormous public debate. I don’t know if you have problems that the Premier happens to work on Sundays, but the accusation that there was not a broad public debate on this is simply unfounded.

As for this motion that you’ve put before us, I can assure you that consultation on regulations is done routinely. It is something we are absolutely committed to doing. We do not need to put it in the statute. There is no reason to do that. It is something we will do.

I think the record of your government, when you were in office, of not even sending legislation to committees puts you on a very weak foundation to criticize this



government for not consulting. We have sent more legislation to committee in the last two years than you did probably in the entire time you were in government.

1110

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Please, Ms. Matthews, don't be so negative and so hostile.

**The Chair:** Are we speaking to the motion?

**Mr. Kormos:** The ads aren't working out there in the public, and that sort of negative attack is being deemed by Canadians to be totally inappropriate in this political context. Let's restore some civility to this committee.

I support the amendment, and I commend Mr. Runciman. But quite frankly, Mr. Runciman, you've got to have been hanging around the Brockville grow op to actually think the government is going to pass this; of course they're not.

But I've got to tell you, you had practitioners here on Monday and Tuesday—these are the people who are doing this work—and the government would be well advised to talk to those practitioners in terms of what works and what doesn't work and what addresses the concerns. My fear is that the regulation-writing process is going to be as unpleasant as it is in most other cases. Quite frankly, consultation to ask questions is one thing, but heeding the advice is another. I'm not disputing—

*Interjection.*

**Mr. Kormos:** I have no doubt that the government consulted, but did they heed the advice?

As to the volume of phone calls, if you, like the New Democrats, had come out earlier on with a clear and unequivocal position, people would have known where you stood and your staff would have been able to deal with other matters. But that's just free advice, worth exactly what you're paying for it.

**The Chair:** Further comments or questions?

**Mr. Runciman:** Just a quick one responding to Ms. Matthews, which perhaps will encourage her to respond back—I hope not; I don't want to delay the proceedings any longer.

In terms of consultation, in which she referenced phone calls, certainly my constituency office was called on a regular basis prior to the Premier's making his announcement. I think it was essentially concerns that had been allowed to fester across the province because of the failure of the government to respond in any definitive way with respect to Ms. Boyd's recommendations. As I mentioned earlier, I think the people who participated in the Boyd process did so in good faith. They felt they were being listened to. Whether they agreed or disagreed with the recommendations she made at the end of the day, they felt they had had the opportunity to have input.

From what we've heard here today, and we've certainly heard it before as well, they felt betrayed by the fact that the Premier made a decision not to accept Ms. Boyd's recommendations and to move ahead with legislation that would clarify the situation. They felt they should have been brought into the loop during that period of time and should have been asked for their views.

Whether or not they agreed with where the government was going, they should have been asked: "We don't want to talk about the decision. This is where we're going. What do you suggest in terms of arriving at that goal?" That's where they felt betrayed, hurt and offended, and I'm saying that can now be addressed through a consultation effort prior to the finalization of regulations. I think that's fair and would be very much appreciated by the people who, up to this point, feel deeply hurt.

**The Chair:** Any further comments or questions? Seeing none—

**Mr. Kormos:** A recorded vote, please.

### Ayes

Kormos, Runciman, Yakabuski.

### Nays

Dhillon, Duguid, Matthews, Rinaldi, Zimmer.

**The Chair:** That's lost.

A government motion: Mr. Zimmer.

**Mr. Zimmer:** I move that section 58 of the Arbitration Act, 1991, as set out in subsection 1(11) of the bill, be struck out and the following substituted:

"Regulations

"58. The Lieutenant Governor in Council may make regulations,

"(a) requiring that every family arbitration agreement contain specified standard provisions;

"(b) requiring that every arbitrator who conducts a family arbitration be a member of a specified dispute resolution organization or of a specified class of members of the organization;

"(c) requiring every arbitrator who conducts a family arbitration to provide specified information about the award, not including the names of the parties or any other identifying information, to a specified person;

"(d) requiring any arbitrator who conducts a family arbitration to have received training, approved by the Attorney General, that includes training in screening parties for power imbalances and domestic violence;

"(e) requiring that every arbitrator who conducts a family arbitration shall,

"(i) ensure that parties are separately screened for power imbalances and domestic violence, by someone other than the arbitrator, and

"(ii) review and consider the results of the screening before and during the family arbitration;

"(f) requiring every arbitrator who conducts a family arbitration to create a record of the arbitration containing the specified matters, to keep the record for a specified period and to protect the confidentiality of the record;

"(g) specifying standard provisions for the purpose of clause (a), dispute resolution organizations and classes for the purpose of clause (b), information for the purpose of clause (c), persons for the purpose of clause (c),



matters for the purpose of clause (f) and a period for the purpose of clause (f)."

**The Chair:** Comments or discussion?

**Mr. Zimmer:** Yes, if I may just speak to this. This motion replaces the proposed regulation-making power of the Arbitration Act, 1991, found in section 58. The changes respond to the submissions made to the committee.

Clause (b) is made more specific to permit regulations which say only certain classes of members of dispute resolution organizations who meet training requirements could conduct family arbitrations. Some organizations have different classes of membership and different subgroups.

Clauses (c), (d) and (e) are made more general to permit flexibility in developing regulations in consultation with affected groups. We want to make sure that the authority in these sections is broad enough to accommodate the needs of several perspectives.

One change to clause (e) meets the concern that arbitrators in their judicial function should not meet separately with parties ahead of time. Regulations could now ensure that such screening is done, but not by the arbitrator. The arbitrator would consider the results of the screening before starting the arbitration. The results of the screening could also be considered during the arbitration.

Finally, clause (g) is changed so that the authority to prescribe specific components of the regulations is gathered in one comprehensive section.

**Mr. Kormos:** This amendment parallels the existing section 58 for all intents and purposes. Why you've made people rewrite those various paragraphs when in effect most of them say the same thing beats me, but you did. I'm with you, Mr. Zimmer, up to and until—

*Interjection.*

**Mr. Kormos:** Because clause (e) addresses the concern that an arbitrator, an adjudicator shouldn't be meeting privately with parties, nor should he or she be getting information from those parties that isn't tendered in the courtroom in the presence of the other party.

So I'm with you until you get to subparagraph (ii). Think about it, friends. You're saying, "You presenters who were right: The arbitrator can't get involved in private meetings and in getting information that is not to be disclosed to the other parties." Remember, we talked about the danger of that information being disclosed; for instance, a party who is a victim. But then, the arbitrator shall "review and consider the results of the screening before and during the family arbitration."

This is of concern. Is the purpose of the screening simply to identify—I'll use the classic language—the power imbalance, or is it to provide redress for the person who lacks parity? Do you do that by equipping that person with legal representation, resources and protection, or do you somehow have the arbitrator review and consider the results of the screening before and during the family arbitration?

If the results of the screening are merely to say that party A is homicidal and you should have a police officer or a security person present in the hearing room, even that causes me some concern. Don't forget, you've included a provision, not inappropriately, where an arbitrator, an adjudicator, can consider incidents of violence, but that narration, the evidence about that violence, has to be tendered in open court, if you will. The evidence isn't to be tendered by one party alone in the absence of the other such that it is unchecked.

1120

Mr. Zimmer, look what you've done. You've solved a problem and then you've created another one. You're giving the arbitrator information that was obtained from one party in the absence of the other party. You're not only giving him or her that information, but then you're telling him or her to use it, not just at the beginning where conceivably you could say the purpose is to ensure that this person has legal representation or that he or she has a lawyer of their own choosing, not one that their partner picked for them in a ruse to victimize them. But to consider it during the family arbitration? Unh-huh.

You were doing so good. You were just coming along fine. You were at a remarkable pace, your breathing was even, your heartbeat was under control, but all of a sudden you've got this embolism erupting in the venal system of this legislation. Why, Mr. Zimmer, why? You were doing so well, and then you trip and fall. You were this close to the gold, and then you stumble and fall. Gosh.

**Mr. Yakabuski:** I agree with Mr. Kormos's concern on that. What we were trying to establish and what we were talking about in the hearings was that originally they were proposing that the arbitrator would be meeting with the parties prior to the arbitration, and they ensured that there would be independent legal advice for these parties so that they would go into this process in a more protected and secure fashion. Now we're basically going backwards and saying, "But now the arbitrator has to take another look at this." I guess the government is questioning as to whether or not people can actually get independent legal advice. Do they not trust the lawyers of the province to give independent legal advice? I don't know, I'm not a lawyer, so I have no record of you not trusting me on anything. I share Mr. Kormos's concern on that, and I'm just wondering whether that subsection was required at all.

**The Chair:** Who are you directing your question to? Are you directing it to Mr. Zimmer or is it a rhetorical—

**Mr. Yakabuski:** It was more of a statement, but yes, perhaps they can give us some response that would comfort us in this regard. In the written word and in his original submission of the amendment, I find no comfort.

**The Chair:** Mr. Zimmer, do you want to respond?

**Mr. Zimmer:** In responding particularly to Mr. Kormos's embolism that he was almost having over this issue, let me say that the cure for your concerns, of course, is that these issues and these questions will get sorted out in the regulations. As you know, when we're



working through the regulations, there's an opportunity for all interested parties and stakeholders to offer us the benefit of their advice, as I'm sure you will, when we work through the regulations, which are the final fine-tuning to the piece.

**Mr. Kormos:** You've added a fourth to the world's three greats. You know the first three: "The cheque is in the mail; your money cheerfully refunded; hi, I'm from the government and I'm here to help you." "Don't worry, we'll fix it in regulations"; how many times have I heard that?

Mr. Zimmer, I've been here long enough that when I started here I was skinny and had colour in my hair. I've heard that line so many times over the course of so many years as a pacifier when there's bad legislation being forced through the legislature: "Okay, it's problematic; but don't worry, we'll fix it in regs."

I want you to win. I want you to have a halo that illuminates all of Willowdale. I'm doing my best, but you keep knocking it off. Every time I place it up there, you knock it off. You just won't co-operate, Mr. Zimmer.

**The Chair:** Any further comments or questions?

**Mr. Kormos:** A recorded vote, please.

### Ayes

Dhillon, Duguid, Matthews, Rinaldi, Zimmer.

### Nays

Kormos, Yakabuski.

**The Chair:** That's carried.

Shall section 1, as amended, carry? All those in favour? All those opposed? That's carried.

Shall section 2 carry? All those in favour? All those opposed? That's carried.

Mr. Zimmer, section 3.

**Mr. Zimmer:** Thank you, Madam Chair, and to the members of the committee.

**Mr. Yakabuski:** What amendment are we at?

**The Chair:** Page 8.

**Mr. Zimmer:** I move that section 24 of the Children's Law Reform Act, as set out in subsection 3(1) of the bill, be amended by adding the following subsection:

"Same

"(5) For the purposes of subsection (4), anything done in self-defence or to protect another person shall not be considered violence or abuse."

**The Chair:** Comments or discussion?

**Mr. Zimmer:** Yes, if I may speak to that. Madam Chair and members of the committee, this motion responds to a concern voiced by METRAC and by the YWCA on Monday of this week. What it does is amend the Children's Law Reform Act to ensure that when the court considers domestic violence or abuse as a factor in determining custody of a child, actions in self-defence are not to be considered.

**Mr. Kormos:** I'm sympathetic to your amendment, because I appreciate the concerns that it responds to, and I'm going to reluctantly support it. I say "reluctantly" for this reason, Mr. Zimmer: We heard the concerns. Basically, what we were being told was that there is a gender distinction to be made around violence. You don't have to be a rocket scientist to understand that it's women who tend to be victimized, who tend to be the subjects of abuse and violence. Let's make this very clear: There are men who are going to avail themselves of this provision. Putting it crudely, "Yeah, I knocked her out because she was coming at me with a butter knife." Look, you've heard that stuff. You've been in the same types of law offices as I have and in the same kinds of courtrooms. So let's understand that there's going to be manipulation of this provision. I can't, quite frankly, suggest a better wording that doesn't then become so restrictive that it loses its utility.

The other issue, of course, is "self-defence." I don't know what standard of self-defence, because you don't use qualifying language like "reasonable." Again, I don't know: Do you expect the courts to import the criminal definition of self-defence? I don't know, because this appears to be stand-alone. I suppose at the end of the day it will be those high-priced lawyers and the public judges—right?—who will have to unravel this and provide further clarification. I appreciate what you're doing. I agree with you and I support the submissions made that prompted this. However, I'm saying that the word "self-defence," without qualifying it—is it subjective self-defence? Is it objective self-defence? You understand what I'm saying.

Also, although we're attempting to address the gender disparity around violence by being so polite as to not use gender language, we're sort of—dare I say it?—skirting the issue, at least a little bit. We know what we're saying and we know what we're addressing, but we don't want to be bold enough to spit it out.

I'm going to support the amendment, with some concern. Once again, like you, I'll be reading those ORs, looking forward to what judges have to say about it.

**The Chair:** Any further comments?

**Mr. Zimmer:** Just let me point out for the record that the OBA specifically endorses this amendment. You have copies of that letter.

**The Chair:** Any further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's carried.

Shall section 3, as amended, carry? All those in favour? All those opposed? That's carried.

Mr. Zimmer, you have the next motion, page 9.

1130

**Mr. Zimmer:** I move that section 4 of the bill be struck out and the following substituted:

"4(1) Paragraph 2 of the schedule to section 21.8 of the Courts of Justice Act is amended by striking out 'separation agreement or paternity agreement' and substituting 'separation agreement, paternity agreement, family arbitration agreement or family arbitration award'.



“(2) The schedule to section 21.8 of the act is amended by adding the following paragraph:

“5. Appeals of family arbitration awards under the Arbitration Act, 1991.”

**The Chair:** Mr. Zimmer, did you want to elaborate?

**Mr. Zimmer:** This motion corrects an omission in the amendment to the schedule to section 21.8 of the Courts of Justice Act in section 4 of the bill. The schedule to section 21.8 defines jurisdiction of the Unified Family Court. The bill now provides that family arbitration appeals are to be heard by the Family Court. The motion to amend adds reference to family arbitration agreements and family arbitration awards to paragraph 2 of the schedule under section 21.8.

**The Chair:** Comments or questions?

**Mr. Kormos:** Help me, please, Mr. Zimmer, how that changes, with specificity, the existing bill.

**Mr. Zimmer:** It corrects a drafting oversight.

**Mr. Kormos:** Okay.

**Mr. Zimmer:** As you know, there's a distinction between the Unified Family Court and the Family Court, and it clarifies that.

**The Chair:** Further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's carried.

Shall section 4, as amended, carry? All those in favour? All those opposed? That's carried.

Mr. Yakabuski, you have the amendment on page 10.

**Mr. Yakabuski:** I do believe that amendment number 10—I guess I've got to read it first?

**The Chair:** Yes, you do.

**Mr. Yakabuski:** I move that clause (b) of the definition of “family arbitration” in section 51 of the Family Law Act, as set out in subsection 5(7) of the bill, be struck out and the following substituted:

“(b) is conducted in accordance with the law of Ontario or of another Canadian jurisdiction and is compatible with the values entrenched in the Canadian Charter of Rights and Freedoms;”

I do believe that this is just supporting language to make it consistent with the amendments we asked for earlier on section 1. It's to support the first amendments that we did, and I'll have to go back there. I think it makes the clauses consistent with the changes we asked for earlier, which were to deal with the amendment that was asked for by the Canadian Jewish Congress. It just makes the language in further sections consistent with that, I believe.

**Ms. Matthews:** I think we debated this one adequately when the previous amendments were proposed, and they were defeated.

**Mr. Yakabuski:** Oh, you mean we don't get to speak for an hour on this?

**The Chair:** I'm here to make sure that you—

**Mr. Yakabuski:** No, I have every confidence, Madam Chair, that the government is going to be as co-operative on these amendments as they were on the first. I therefore am not going to go into a long request for them to support us on this, but would point out again that I think

they were in error earlier and I suspect they'll be in error again.

**The Chair:** Any further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Mr. Yakabuski, you have the next amendment.

**Mr. Yakabuski:** I move that paragraph 2 of section 3 of the Arbitration Act, 1991, as set out in subsection 1(3) of the bill—

**The Chair:** I think you're on the wrong page. Page 11.

**Mr. Yakabuski:** Oh, my God, I am. I'm sorry. I had gone back to the others. Thank you very much, Madam Chair.

**The Chair:** You were trying to confuse me, but we're paying attention.

**Mr. Yakabuski:** I appreciate that. Now, if we can get back on track.

**Mr. Lou Rinaldi (Northumberland):** Let the government help.

**Mr. Yakabuski:** Yes, I appreciate that.

I move that subsection 59.2(1) of the Family Law Act, as set out in subsection 5(10) of the bill, be struck out and the following substituted:

“(1) When a decision about a matter described in clause (a) of the definition of ‘family arbitration’ in section 51 is made by a third person in a process that is not conducted in accordance with the law of Ontario or of another Canadian jurisdiction or is not compatible with the values entrenched in the Canadian Charter of Rights and Freedoms,

“(a) the process is not a family arbitration; and

“(b) the decision is not a family arbitration award and has no legal effect.”

Again, I believe this amendment is one that speaks to the earlier amendments we put forward; the second amendment. I'm suspicious that the—I'm not really suspicious; that's not a very nice word. I'm doubtful that the government is going to change its tune at this stage of the game.

**The Chair:** Further discussion?

**Mr. Zimmer:** I think we've debated this issue at length on the previous amendments.

**The Chair:** Further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Mr. Yakabuski, you have one more.

**Mr. Yakabuski:** When Mr. Runciman gave me the huge responsibility of replacing him here for the last bit of this clause-by-clause, I thought I might get one through just because—

**The Chair:** It's not over yet.

**Mr. Duguid:** Just because we like you better.

**Mr. Yakabuski:** It just doesn't work that way, I guess.

**The Chair:** Page 12.

**Mr. Yakabuski:** Yes, I know. I have to take a look at this. I hadn't got this far, to be honest with you.



**The Chair:** You do need to read it into the record, at least, to begin with.

**Mr. Yakabuski:** Okay, let me read it into the record.

I move that subsection 5(10) of the bill be amended by striking out sections 59.4 and 59.5 and paragraph 1 of section 59.7 of the Family Law Act.

I have to do some thinking on this one, Madam Chair. I hadn't got this far, so I'm not sure what we're asking here. This might be something to do with legislative counsel who deal with making things consistent, because I'm not sure that it speaks to any kind of amendment that we were asking about.

**The Chair:** Would you like us to vote on it now, Mr. Yakabuski?

**Mr. Yakabuski:** I have no doubt that I'm not going to be—

**The Chair:** Hold on. Mr. Zimmer?

**Mr. Zimmer:** We understand what you would say if you were going to say it, so we can just go to a vote.

**Mr. Yakabuski:** Sure.

**The Chair:** All those in favour of the motion? All those opposed? That's lost.

Mr. Zimmer, you have the next amendment.

**Mr. Zimmer:** This motion adds a summary enforcement mechanism for family arbitration awards to respond to concerns from the lawyers who spoke—

**The Chair:** Mr. Zimmer, could I ask you to read the amendment before you describe what it does?

**Mr. Zimmer:** My apologies.

I move that subsection 5(10) of the bill be amended by adding the following as section 59.8 of the Family Law Act:

“Enforcement

“59.8(1) A party who is entitled to the enforcement of a family arbitration award may make an application to the Superior Court of Justice or the Family Court to that effect.

“Application or motion

“(2) If there is already a proceeding between the parties to the family arbitration agreement, the party entitled to enforcement shall make a motion in that proceeding rather than an application.

“Notice, supporting documents

“(3) The application or motion shall be made on notice to the person against whom enforcement is sought and shall be supported by,

“(a) the original award or a certified copy;

“(b) a copy of the family arbitration agreement; and

“(c) copies of the certificates of independent legal advice.

“Order

“(4) If the family arbitration award satisfies the conditions set out in subsection 59.6(1), the court shall make an order in the same terms as the award, unless,

“(a) the period for commencing an appeal or an application to set the award aside has not yet lapsed;

“(b) there is a pending appeal, application to set the award aside or application”—

**The Chair:** Mr. Zimmer, could I ask you to read (a) again, because you said “lapsed” instead of “elapsed.” We want to make sure we get it accurately.

1140

**Mr. Zimmer:** I'm sorry.

“(a) the period for commencing an appeal or an application to set the award aside has not yet elapsed;

“(b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity; or

“(c) the award has been set aside or the arbitration is the subject of a declaration of invalidity.

“Pending proceeding

“(5) If clause (4)(a) or (b) applies, the court may,

“(a) make an order in the same terms as the award; or

“(b) order, on such conditions as are just, that enforcement of the award is stayed until the period has elapsed without an appeal or application being commenced or until the pending proceeding is finally disposed of.

“Unusual remedies

“(6) If the family arbitration award gives a remedy that the court does not have jurisdiction to grant or would not grant in a proceeding based on similar circumstances, the court may,

“(a) make an order granting a different remedy, if the applicant requests it; or

“(b) remit the award to the arbitrator with the court's opinion, in which case the arbitrator may award a different remedy.”

This motion adds a summary enforcement mechanism for family arbitration awards to respond to the concerns from the lawyers who spoke to us on Monday. You will recall Mr. Bastedo in particular urging that without speedy enforcement, arbitration became nearly meaningless.

This motion creates a new section, 59.8, of the Family Law Act. The section requires the person seeking enforcement to demonstrate that all the requirements of the Arbitration Act, 1991, and the Family Law Act have been met. Once these requirements are met, the court must enforce the award. There is no opportunity to reopen the issues decided by the arbitrator and start the case over again in the courts, which is the very thing that the lawyers, and particularly Mr. Bastedo, were concerned about.

The new section mirrors section 50 of the Arbitration Act. For example, enforcement is not automatic until all appeal periods have passed and any appeals have been decided. I am told that the Ontario Bar Association family law section, through its chair, Kelly Jordan, who we heard from on Monday, thinks this meets the bar's concerns, and in fact you have a letter to that effect.

**Mr. Kormos:** The OBA may be satisfied, but I've got to tell you, Mr. Zimmer, I'm still a little anxious. Let me tell you why; a couple of things.

One, language that is used, for instance, in subsection (1): “A party who is entitled to the enforcement of a family arbitration award.” I would ask, why is the word “entitled” there? Shouldn't any party to an arbitration which culminates in an award be allowed to have that



award converted into a judgment? I think this is what your section does here. It permits a court to summarily turn an arbitration award into a judgment. I don't know why "entitled" is there. If you're a party to the award, it seems to me that, for whatever reasons, good or bad—litigators love this language because that means somebody else can say, "No, you're not entitled to the enforcement." What does entitlement mean? I'm just worried about it. It's language that seems to me to serve no purpose, yet at the same time, even if it's mere pettifoggery, to create a climate wherein there's litigation. That's presumably what we're trying to avoid.

I appreciate the supporting documents. I appreciate the language, and I suggest that some of your colleagues pay attention to language like "declaration of invalidity." That's what we were talking about before. I presume that means that when an award is not made in compliance with Ontario law, it's invalid, so you're asking a court to declare it invalid. So you see, it's not an appeal; you're seeking a declaration from the court. We spent a lot of time on that a little while ago, trying to make this distinction between what's appealable and what is merely declared invalid.

I'm concerned most, though, I suppose, about subsection (6). I appreciate the indication around jurisdiction, because a court is not going to make a judgment around which it does not have jurisdiction, but I don't know what the words "would not grant in a proceeding based on similar circumstances" mean. I'm worried they mean that a court can then interject its own views on an otherwise valid arbitration.

It seems to me that it would be enough to say "does not have jurisdiction to grant," and then with the two remedies. But to go further and say "or would not grant in a proceeding based on similar circumstances," once again, is the court being invited to usurp the arbitrator and his or her award? I don't know. If that language is imported from other legislation where it has a clear meaning, please say so. Are you not at all concerned about that particular phrase? That's my strongest concern here: "would not grant in a proceeding based on similar circumstances." Yikes. That seems to me an invitation to a judge to say, "I wouldn't have made this award, and I'll tell you what I'm going to do: I'm going to replace it with my own ruling." It goes well beyond what is or isn't *ultra vires*, right? The "would not grant in a proceeding based on similar circumstances": Can you help me with that, sir?

**Mr. Zimmer:** Going back to the earlier provisions, the discussion is about maintaining the right to appeal on questions of law, so the grounds of the appeal are narrow and confined to those questions of law. There isn't the possibility of a judge, as you know, substituting his or her own opinion in a whimsical manner here.

With respect to your first comment on 59.8, on who is entitled, obviously any party to the proceeding, or a child and so on who is the beneficiary of the award, is entitled.

**Mr. Yakabuski:** With respect to Mr. Zimmer's position there, he used the word "obvious." I'm not a lawyer,

but I do believe that in law, nothing is obvious, and Mr. Kormos has pointed that out. He seized on one word and probably could have spoken for an hour or two on the consequences of one word in any particular section of law, but he's speaking on this one in the amendment. So we can only surmise as to how long lawyers in an adversarial situation might argue that point.

**1150**

I would certainly say that I'm pleased that the government has addressed the concern—I don't know that they've addressed it, because I'm not a lawyer; I can't decipher this language and say that I'm satisfied with it or not. I'm going to take the government at their word for the time being. But it really strikes me as kind of curious that only after the submissions the other day by people like Mr. Bastedo have they considered this kind of amendment with regard to enforceability. It would seem to me that the original intent of this bill on the part of the government was really to make the arbitration process disappear, null and void in this province, because if a process has no meaning and is not enforceable, it certainly ceases to exist in any meaningful way.

I am pleased that they at least addressed the problem. I can't speak to whether or not they solved it, because I don't have the luxury of legal counsel beside me telling me whether this is good or bad, and at that, of course, it's only an opinion; I'm sure that someone like Mr. Kormos could probably argue very well any section of law that exists. I am pleased that they have at least made an attempt here to address it.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** To two of the same issues, and I appreciate Mr. Zimmer's response around subsection (1). I would support the proposition that, for instance, a child who is the subject matter of an award be entitled to unilaterally enforce that award. You could think of any number of circumstances; for instance, an award that ordered support for post-secondary education, or even child support, should the child be of an age beyond 16 or 18, where that kid is no longer in the control or in the home of one of the parents.

But I'm not sure, and if there are people here who know better, please say so: I'm interpreting "party" as being party to, as being a litigant: "A party who is entitled to the enforcement..." If "party" has a small "P"—in other words, a person "who is entitled to the enforcement of a family arbitration" to me seems much clearer, isn't it? I'm concerned here that "party" clearly means the parties to the litigation, the plaintiff and the defendant; there might be more than one or two. I'm concerned about that. If it does what you say it does, then I say, "Bang on," because it's important.

I agree that, for instance, a child, or let's say a grandparent—this whole arena of grandparents' access. A grandparent may not be a party to the litigation, to the arbitration, but the court may rule that grandparent Jones is entitled to have access to his or her grandchild. So it would be important for that grandparent—I agree with you—to have enforceability powers, even though he or



she wasn't a party. I hear you, and I'm listening as hard as I can, but I'm still concerned about that.

Let's get down to subsection (6), though. Clearly the "or" there, Mr. Zimmer, is an exegetical "or," isn't it?

**Mr. Zimmer:** Sorry?

**Mr. Kormos:** It's clearly an exegetical "or," right? So you've got a stand-alone "would not grant in a proceeding based on similar circumstances...." This isn't an appeal. It can't be an appeal. This is an enforcement mechanism. I understand that we have no business calling upon a court to enforce something that the court can't enforce. What do you lawyers call it? Ultra vires? Something that's ultra vires of the court, Mr. Yakabuski?

**Mr. Yakabuski:** If you say so.

**Mr. Kormos:** Well, Mr. Zimmer told me it was. You can't expect a court to make a judgment around something that is beyond—maybe you can, but I'm appreciating the purpose here. But the second part of that sentence has nothing to do with jurisdiction, nor does it have anything to do with appeal: "or would not grant in a proceeding based on similar circumstances...." That seems to me to provide an opportunity, because there are no checks or balances on it—it simply "would not grant in a proceeding based on similar circumstance"—in terms of the law, in terms of the interpretation of the facts, in terms of the fairness of it. It doesn't qualify in any way, shape or form. It simply invites that judge to say, "No, I wouldn't have done this. I think the arbitrator is out to lunch, so I'm going to replace that arbitrator's decision, or this part of that arbitrator's decision, with what I would have done had I been hearing this case."

That's pretty dramatic stuff, isn't it? I appreciate that you want court supervision, in this respect, of the award, to the extent of jurisdiction. I gave you the Chief Justice Dickson article, didn't I, Mr. Zimmer—

**Mr. Zimmer:** Yes.

**Mr. Kormos:** —in the law society gazette from 1994, where Chief Justice Dickson seemed to be advocating court-supervised dispute resolution? He didn't seem to be a fan—granted, it was only 1994—in many cases, not all, of the complete separation: private courts versus public courts. For instance, he talked about child custody as an area in which there should be public supervision and public oversight of judgments. So he would seem to say that at least some cases of child custody shouldn't be done in private in alternative dispute resolution modes. Again, there's a whole spectrum of opinion on this. There are the hard-core anti-settlement people like Professor Fiss, and then there's Chief Justice Dickson who, in my view, has a very balanced view on the matter. He was one of our great Canadians; a westerner too, by the way.

But what are you doing here? If the judge would not grant that same remedy, he or she can impose their own. I don't think you're going to oppose your own amendment. I suspect it's going to pass. I'm just stating a concern about it. Can you help me? Am I beyond help?

**Mr. Zimmer:** Just by way of comfort to you, Mr. Kormos, the unusual remedies you're speaking about here would not grant in a proceeding based on similar

circumstances that whole issue. I should point out that that language is taken from the current Arbitration Act, which, as you know, has been in existence and well used and so forth for many, many years. Secondly, to point out again, we're talking about an appeal based on law, not on fact. As you know, on appeals on law, it's a very narrow: Did the original decider get the law wrong, as opposed to a judge saying, "Well, that's not the decision I would have made on that particular fact situation. I don't like that, and I'm going to substitute my own decision"? We are talking about an appeal on law, not fact. As a lawyer, you appreciate that distinction.

With respect to entitlement, the word "entitlement" was also taken from the current Arbitration Act, so ditto my previous comments. I would also observe that "entitlement" is a broader category than "party to the proceedings."

**Mr. Kormos:** As I say, I have concerns in the context of family litigation. Here you are: This is the "neither fish nor fowl" that I've had occasion to speak about, and I'm going to speak about that just before we wrap up in the closing comments. Does section 59.8 also provide the interlocutory powers, the interim order powers that are readily enforceable, and if so, how have you addressed the concern about the need to make interim orders that are readily enforceable immediately, like today; for instance, a violent spouse out of the house today or orders restraining for the disposition of family assets? Is this part of 59.8?

**Mr. Zimmer:** As you know, the rules of procedure and so on tend to make a difference between final orders and interlocutory orders by way of limiting the review of the order. So sometimes interlocutory orders are or are not; final orders usually always are. This uses the more generic "order." It's a broader concept.

**Mr. Kormos:** But once again, is this section that you're moving by way of amendment now the one from which an arbitrator will derive his or her power to make interim orders that are immediately enforceable?

**Mr. Zimmer:** This amendment does not break it down and talk in terms of final orders or interlocutory orders generally.

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**Mr. Kormos:** What you're telling us is that when you contemplate awards here, you're talking about interim awards, interim rulings as well as the final award which is to be regarded as a domestic contract, because you haven't deleted the portion of the bill that still permits a party to enforce the award by virtue of litigating it as a domestic contract. You've retained that section. You've provided an option here, of which I endorse the intent, but what I'm saying once again is that this is what's to provide the interim relief powers.

**Mr. Zimmer:** Yes.

**Mr. Kormos:** Mr. Zimmer said yes.

**Mr. Zimmer:** It's orders, broadly speaking. I haven't broken it down and sort of split it down into interlocutory orders and orders; that's more in the nature of the



language that you find in the court system. We're talking about arbitrations here—orders and arbitrations.

**Mr. Kormos:** Highly regulated arbitrations.

**Mr. Zimmer:** Orders and arbitrations, and the general idea in an arbitration/mediation. There's a certain flexibility there that perhaps you don't find in the rules of practice in a criminal procedure or a civil procedure.

**The Chair:** Any further comments or questions on this amendment? Seeing none, all those in favour? All those opposed? That's carried.

Shall section 5, as amended, carry? All those in favour? All those opposed? That's carried.

Shall section 6 carry? All those in favour? All those opposed? That's carried.

Shall section 7 carry? All those in favour? All those opposed? That's carried.

Shall the title of the bill carry? All those in favour? All those opposed? That's carried.

Shall Bill 27, as amended, carry? All those in favour? All those opposed? That's carried.

Shall I report the bill, as amended, to the House?

**Mr. Kormos:** Chair?

**The Chair:** Mr. Kormos.

**Mr. Kormos:** I'm not going to be lengthy. I say this after having had an opportunity, along with my caucus colleagues and with the assistance and support of staff—both our caucus staff as well as staff made available to us here through the Legislative Assembly—to look at the bill and to examine the issues. I want to repeat—and I speak for the NDP when I say this—our regard for Ms. Boyd and the work she did on this issue. I think it's important that nobody try to trivialize the work that she did or the recommendations that she made. I regret that, from time to time, statements that she made have been misquoted, to be quite candid, because she was very cautious in what she said.

Having said that, it's regrettable that the NDP here at Queen's Park could not endorse the Boyd recommendations. I say it's regrettable because she's a friend of ours. She was a very capable, competent, good and outstanding Attorney General, the first Attorney General that I'm aware of who was not a lawyer and, of course, a strong feminist and—I'll go one further—a progressive feminist. I want to state that very clearly. Her role in this debate has not, in my view, been diminished by virtue of her recommendations not being adopted 100%, because there are elements of Boyd in this legislation.

Having said that, quite frankly, New Democrats are of the view that family law matters have sufficient societal importance that they should be resolved by public courts applying public law. That's our position; that's the conclusion that we reached. That does not mean that people can't have access to arbitration or other forms of ADR, alternative dispute resolution; it's just that, don't expect the public courts to enforce anything other than public law that has been litigated in public courts under the supervision of a public judge. That, of course, takes us to what this bill doesn't address, and that is, in my view, what the real issue is and what the real concern is.

We accept that there are those—and primarily it's women and children; let's not fudge things around this—in some cultures and in some faith cultures who are not accorded the same—I'm being very, very careful here because I think it's important not to be judgmental. New Democrats have been very clear that people are entitled to believe in anything they want. If people believe freely in things that I find perhaps not to be suitable, God bless; that's their right. You heard some of this in terms of state interference in the religious and spiritual affairs of people, and there's validity to that argument.

Caleb Carr, the writer, wrote that all cultures are equally valid. Be very careful, because I've had occasion to say that. He's the son of Lucien Carr—do you remember, Mr. Zimmer?—and an interesting writer. Caleb Carr wrote, "All cultures are equally valid." I've had occasion to use that phrase and have come under attack. "What do you mean, 'All cultures are equally valid'? What about cultures that endorse certain practices that we find reprehensible?" That's not what Carr said when he said cultures are valid. He didn't say, "All cultures should be applauded and their standards should be accepted as just standards, or standards that are consistent with our western, liberal sense of human rights and values." He said, "All cultures are equally valid."

One of the concerns that I have about this whole debate is how, from time to time—indeed, more frequently than anybody would wish—it stooped into racism, and it nurtured as well as exploited that culture of anti-Islamic thought that, all said, I think has strong roots in the United States, and the whole propaganda machinery. I really regret that.

That's why we've been very careful not to identify this as a religious issue or as a feminist issue, but rather as a broader justice issue that affects all people. Yet, having said that, you can't disguise the fact that it was the sharia law furor that gave rise to this whole exercise. There was not a furor around the application of rabbinical law by rabbinical courts. There may well have been criticism of them by parties who didn't share their values or by parties who felt they were victimized by out-of-date standards or standards that weren't consistent with our sense of civil liberties and human rights. But there was no furor, for sure. Ms. Boyd had occasion to canvass other faith areas.

Let's understand this. As I've had occasion to say a couple of times over the last couple of days, it seems to me that the same coercive factors that force a woman into a faith-based decision-making process that results in decisions that aren't consistent with broader Canadian values and senses of fairness are going to force that woman to comply with the award, to comply with the order—the cultural forces.

I come from a cultural background where, for instance, married women add a suffix to their name, the possessive, to indicate they are the property of a spouse, and they still do it. Not in Canada, but they still do it in places in Europe, for instance. They do it just because, but its origins had better be very clear.

I was concerned when I heard comments about marriage and family having their roots in religion, because I'm not sure that's the case. I'm sure there are faiths that would want to make claim to that because, let's face it, marriage and children had their origins in property rights. They were the property.

Hard is the fortune of womankind

Always mistreated, always confined

Controlled by her parents until she's a wife

Controlled by her husband the rest of her life.

That's an old child's ballad from Britain, but it spoke of the reality: Women were chattels; children were chattels. And there are places in the world where I believe that concept is still far more dominant than we wish it was.

As I say, it is those regrettable beliefs and those belief systems that I call regrettable—but acknowledging that all cultures are equally valid—that we're attempting to address here. I don't think we've done it with this legislation. I say that in all sincerity.

I wish the government well in implementing this, because I also have regrets. I'm a fan of ADR. I'm a fan of arbitration. I think arbitration is a wonderful tool, but of course, as we've said, for it to be arbitration, it has to be parties willingly participating and not coerced into participating, because it's no longer an arbitration then. I feel that what the government has done here has created—because there has been more than a little bit of reliance on the fact that our courts are backlogged, that it's time-consuming and indeed expensive and risky to resolve a family matter in the public courts. That's right. People with means are going to avail themselves of arbitration.

My constituents, just like yours, lined up in those provincial court family divisions that Judge Lloyd Budgell down in Welland, who handles a court docket and has staff—these people work incredible hours, and it's like a sausage factory. The single moms who are being beaten and their kids who use these courts—because you can use these courts without a lawyer; they can't afford a lawyer. If they can't get a legal aid certificate, they can't find a lawyer to represent them. These people are not going to be helped by any arbitration process because they don't have the means.

The real problem, in my view, in terms of women who are new Canadians, who perhaps have language barriers and cultural barriers, is that the real justice to be done for them is not to regulate the arbitration process that they're going to be compelled to participate in anyway, but to provide broader access to our public court system so that they get protection and remedies in that public court

system. We've missed the bull's eye; we've missed the target entirely here.

I do not think this solves the problem. I respect and understand the point of view that it puts forward, but I don't think it solves the problem. As well, I think it erodes arbitration of family matters for those people who, bona fide, can utilize it with just consequences, with just results, because it fetters it.

We are looking forward to third reading debate in the Legislature.

I want to thank the Chair and the staff once again: Mr. Kaye, Ms. Schuh, legislative counsel. Do you realize what kind of pressure we put them under when we compress these hearings—two days of public hearings and then one day of clause-by-clause? They've got to produce all this stuff overnight. That's why I'm a big fan of unions.

**Mr. Zimmer:** Sorry, a big fan of?

**Mr. Kormos:** Unions, so that people can at least be protected from bad bosses who make them work into the late hours of the night. But no, I thank the staff. In these compressed hearings, it's very difficult. And I thank committee members for having engaged, by and large, in a healthy exchange over the course of the last three days.

**Ms. Matthews:** My remarks will be briefer, but they are as heartfelt as those expressed by Mr. Kormos.

I want to take a minute and thank Marion Boyd for the tremendous work she did on this very, very difficult issue. She is a woman and a fellow Londoner for whom I have enormous respect, and I think she took on a very difficult challenge. She made recommendations, many of which are included in this legislation, and I think it's important that we acknowledge the tremendous work she did do to produce her report.

I also do want to express my thanks to all the staff who led us through this and lent us their expertise and their guidance, and it is very, very much appreciated. I too look forward to third reading debate.

**The Chair:** Good. Shall I report the bill, as amended, to the House? All those in favour? All those opposed? That's carried.

This concludes this committee's consideration of Bill 27. I'd like to thank everyone on the committee for their work on the bill. This committee also thanks the staff and the members of the public who contributed to the committee's work.

The committee now stands adjourned until Wednesday, January 25, 2006, when we commence public hearings on Bill 206.

*The committee adjourned at 1210.*











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Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 25 January 2006

# Journal des débats (Hansard)

Mercredi 25 janvier 2006

**Standing committee on  
general government**

Ontario Municipal Employees  
Retirement System Act, 2006

**Comité permanent des  
affaires gouvernementales**

Loi de 2006 sur le régime  
de retraite des employés  
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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 25 January 2006

Mercredi 25 janvier 2006

*The committee met at 1017 in room 151.*ONTARIO MUNICIPAL EMPLOYEES  
RETIREMENT SYSTEM ACT, 2006LOI DE 2006  
SUR LE RÉGIME DE RETRAITE  
DES EMPLOYÉS MUNICIPAUX  
DE L'ONTARIO

Consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act /  
Projet de loi 206, Loi révisant la Loi sur le régime de retraite des employés municipaux de l'Ontario.

## CITY OF OWEN SOUND

**The Chair (Mrs. Linda Jeffrey):** Good morning. The standing committee on general government is called to order. We're here today to commence public hearings on the second reading version of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act. I'd like to welcome all of our witnesses and tell you that you have 15 minutes to make your presentation. When you come to the table at the front, could you identify yourselves and the group you speak for. You will have 15 minutes.

Our first delegation this morning is from the city of Owen Sound. Good morning. If you're all going to be speaking, could you provide your names for Hansard. When you begin, you'll have 15 minutes, and should you leave time at the end, we'll be able to ask you questions.

**Ms. Ruth Lovell:** I am Ruth Lovell, the mayor of Owen Sound.

Committee members, I want to take a brief opportunity to thank all of you so much for giving us the opportunity to speak. I compare us to the middle child in a family. We're a small urban municipality. We don't have the glamour of the larger cities and we're not quite as enchanting as the rural municipalities, but we do have a niche in this world, somewhere. We often feel overlooked, so we are very, very grateful to have the opportunity today to come and speak with you.

We have Arlene Wright, who is the chair of the financial advisory committee in Owen Sound as well as the vice-chair of the police services board, and Dail Levesque, who is our human resources director. He will

be making the presentation, but I did want to have an opportunity to say thank you.

**Mr. Dail Levesque:** Good morning, and thank you very much for the opportunity to appear before you.

The first thing I'd like to do is assist you in putting a face on the city of Owen Sound. We're an award-winning municipality, and we would like you to know a little bit about us. Some of you may know that we're about two hours north of here, right at the south end of Georgian Bay. Driving fast, and as long as the snow is not blinding, you can get there in about two hours. We are the regional centre for Grey and Bruce counties. We have a population of about 21,000 people. Compared to other municipalities our size, our average earnings are about 11% behind. We have 8,900 dwellings, and of those, 4,000 are rentals.

We supply all the normal services of a municipality, including a full-time police force—section 31—and fire department. We employ 336 employees; 234 of them are full-time and 102 are part-time. One hundred and seventy-nine of those are NRA 65 under the OMERS act, and 70 are NRA 60: 40 police and 30 fire.

Our city budget is approximately \$40 million. We get \$16 million from taxes. Our current OMERS costs are about \$875,000 a year. The cost to the city as a result of these proposed changes will rise from \$875,000 to about \$1 million or \$1.2 million. That's a conservative estimate: \$325,000 to \$400,000.

We have lost \$2 million in the old CRF funding and the new OMPF funding grants. This loss is not uncommon among municipalities our size due to the failure of the province to consider small urban municipalities and our being sandwiched between the rural needs and the large urban areas.

To reiterate, Owen Sound is the largest municipality in our area. We are the regional centre, meeting the needs of Grey and Bruce counties. Our population is small and stagnant. The residents earn less on average than those residents in comparable cities. We have been hit hard with downloading. The latest rounds of provincial cuts have left our city, as I said, some \$2 million short, and that's not uncommon to other smaller municipalities in our province. When you consider the hard cap the province has placed on municipal taxes, all of the OMERS-related increase will fall to a relatively small group of residential taxpayers who are least able to pay. We need your help.



Our major concerns about this legislation are: First and foremost, we've studied the submissions from AMO, the association of human resource professionals and the association of police services boards. We support their findings in total. The province is rushing to reform one of Canada's most important pension funds without a reasonable understanding of the potential repercussions and without sufficient regard to the best interests of employees, retirees, employers, communities and, most importantly, taxpayers, because that's where all of this OMERS money comes from.

Analysis has confirmed that the proposed changes will significantly increase labour costs, resulting in increased property taxes in our city. Both the federal and Ontario provincial governments tell us that we don't have the required workforces to meet our needs in the future. Bill 206, if passed, will enshrine the ability of the workers that we do not have to exit even earlier, further exacerbating the employment picture. The anticipated increased cost estimates for the basic plan and supplemental plans represent \$125,000, or a 1% tax increase, just for the basic OMERS plan, and a further \$200,000, or a 1.5% tax increase, for the supplemental plans for fire and police.

Bill 206's simple majority scheme essentially devolves governance of the \$36-billion OMERS plan into the hands of an arbitrator. In an arbitration-based process, history has shown us that the concerns of small urban municipalities take a back seat to the big players, yet our pressures are just as dire. In other words, once the arbitration process starts awarding these supplemental plans, which will happen, supplemental plans will be imposed on Owen Sound regardless of the employer's concerns or the taxpayers' ability to pay. We've seen this time and time again in small urban municipalities: Once the arbitration process starts, it just washes over you.

The sad and unfortunate truth is that Bill 206's revised simple majority scheme and its improbable super-majority component practically devolve the governance and responsibility of this \$36-billion plan into the hands of one single individual: an unaccountable arbitrator. Are you even aware of anyone qualified to take on such a task? Is there a reason you can share with us that justifies so significant a departure from governance best practices, that justifies an arbitrator instead of this board rolling up its shirt sleeves and working at developing a consensus?

In your role as plan sponsor now, you have to reach consensus around the cabinet table. You wouldn't think of possibly handing over your sponsorship responsibilities to an arbitrator, yet you are prepared to undermine this new corporation with such a mechanism before it even begins the process of consensus building.

An arbitrator would have a significant say on the municipal tax rate without any regard to tax increases or cost-cutting in terms of human resources or services to accommodate an arbitration decision. We can't just pick the money out of the air or off a tree. If we get these big arbitration awards, which has happened in the past, we

have to make cuts in other areas of our tax-supported municipal services.

Supplemental plans which would provide for additional pension plans, such as enhanced early retirement or an increased benefit accrual rate higher than the current maximum: Historically, there were supplemental plans as part of the OMERS plan. We had one with our police association, and it went into our collective agreement as a result of an arbitrator putting it there.

You may be interested in knowing that history does repeat itself, and in the five to seven years following the introduction of those supplemental plans, arbitrators had spread it across the province and those supplemental plans became the basic OMERS plan.

Given the proposed structure of the sponsor group and their access to arbitration, it won't be long before every police, fire and paramedic group in the province has these supplemental plans and other OMERS members want and get the same.

Each employer could conceivably provide access to different supplemental plans under a number of collective agreements. This could be made even more complicated if an employee changes careers with the same employer or employers over the course of their career. With respect to our police service, there is a major concern as we have a lineup of constables from the large urban police forces who want to work and live in Owen Sound. The introduction of these officers into our force creates expectations that we cannot afford to meet.

At odds with any notion of autonomy, Bill 206 specifically directs the sponsors corporation to consider providing supplemental plan benefits to the police and fire sectors. The choice of cities similar to Owen Sound disappears under this bill. Given the no-strike restrictions in the police and fire sectors, interest arbitrators would have the ability to award access to such plans if it were raised in local collective bargaining.

Municipalities are working hard to hold the line on property taxes; they do not have the budget flexibility to accommodate supplemental plans. In the past, arbitrated settlements have not reflected the ability to pay within the terms of a binding settlement.

We respectfully request that the government scrap Bill 206 and go back to what the original OMERS devolution discussions in 2002 entailed; that is, increasing efficiencies in decision-making and streamlining OMERS board appointments. Failing this, we would ask that the Ontario government remain as the plan sponsor; the proposed binding arbitration features be eliminated; any supplemental plan that may be allowed be negotiated at the local level and these negotiations not be subject to any binding arbitration process; and that the financial concerns of provincial and local taxpayers and provincial and local economic conditions be mandated to be considered in any plan changes.

Thank you for your consideration of our written submission, and we look forward to your response.

**The Chair:** You've left about two minutes for each party to ask a question. Mr. Hardeman.



**Mr. Ernie Hardeman (Oxford):** Thank you very much for the presentation. I just wanted to quickly go back. On page 2 you talked about the cost of the plan. I just want to point out, first of all, that I share your concern that there may be a cost to the plan, but we've been hearing all kinds of numbers as to what that will be. So far we've been unable to get the government to come up with a suggestion of what they believe the numbers will be. I think it's very important that it appears they have not done any work as to what the impact will be on the property tax base and on municipal budgets for the cost.

In your presentation you point out that the cost will be \$125,000 just for the basic OMERS plan and a further \$200,000, or a 1.5% tax increase, for the supplemental plans for police and fire. Could you tell me where the increase is without the supplemental plans?

**Mr. Levesque:** If there are no supplemental plans, our increases will still be 1%, just because of the increases to the basic plan. If we do wind up with supplemental plans, then we're looking at a further \$200,000 at a minimum.

1030

**The Chair:** Thank you. Ms. Horwath.

**Ms. Andrea Horwath (Hamilton East):** Thank you very much for coming out to make your presentation. I wanted to ask you a little bit about your concerns around the arbitration process, and particularly whether or not your experience in previous arbitrations has been one where the arbitrator looks at all of the various factors and makes decisions in that vein. I know that others have come saying they are concerned that arbitrators will make decisions that will not take into consideration the situation of the particular municipality or employer, for example. Could you just expand on your concerns in that regard?

**Mr. Levesque:** I've been in this business for 33 years this year, and access to arbitration has been a feature throughout those 33 years. I've got to tell you, once an arbitration process starts—for example, in the police world, we're seeing that the big push now is 3%, 6%, 9%.

Just ask yourself, do you think the concerns of a little place like Owen Sound, two and a half hours outside of Toronto, mean a hill of beans to an arbitrator? They start with the big guys. They start with the Peels, the Torontos and the Durhams, and just roll over us. By the time we get to make a presentation, half the time they're yawning through our presentation, not listening to us, and they award it. That's how we get stuck with a lot of things.

What does that mean to a place like Owen Sound, when you've got a stagnant population, a stagnant tax base, and the ability to move with the tax caps that we have now is extremely limited? How are we supposed to come up with the money to pay for things like 3%, 6%, 9% and like supplemental plans when they come, if they come? That's what happens to us. We get left in the dust. Little old Owen Sound, the Stratfords of the world, the Orillias of the world, the Brockvilles of the world—we're all in that 20,000 population. Our concerns are really left

on the side. Our experience is that once the wave starts, it just washes over the little guys.

**The Chair:** Thank you. Mr. Duguid.

**Mr. Brad Duguid (Scarborough Centre):** I've got in your submission here that you've estimated that the cost to your city as a result of the proposed changes will be \$1 million to \$1.2 million. I'm trying to figure out where that would possibly come from. Are you using AMO's numbers, which, in our previous committee, were seen as worst-case scenario, full take-up, totally unrealistic?

**Mr. Levesque:** No. These numbers come from our treasurer. Start at the \$875,000, which is our current OMERS cost. Then, with the supplementals and the basics, our numbers go to \$1 million or \$1.2 million, and those are conservative numbers. Those are based upon all our current employees, all the current rates that they pay based on OMERS, and the calculations applied to them.

**Mr. Duguid:** Are they including the reintroduction of the contribution rates in that?

**Mr. Levesque:** The 2.3%?

**Mr. Duguid:** In your \$1 million to \$1.2 million.

**Mr. Levesque:** The increases that are being applied to the basic plan are one thing; the costs that the supplemental plans are going to generate are another. So when you add them both together, we're looking at about \$1.2 million.

**Mr. Duguid:** I guess what I'm trying to figure out is, what are you assuming is going to be implemented in the supplemental plans? Are they assuming that everything that the police and fire are asking for will be accepted or agreed to by your municipality, or are they assuming that—

**Mr. Levesque:** We do have to make some assumptions, because, of course, nobody has told us what's going to be there. Nobody has given us any costing; nobody has given us any ideas. So we're left to sit back and make some assumptions—you're right—because that's all we have to go on, and we have to make a wild guess as to what's going on out there and where things are going to settle in.

**Mr. Duguid:** You've thrown out \$1 million and \$1.2 million in your submission here. I'm trying to figure out where that's coming from. Are you assuming full take-up of the benefits for your firefighters and police, or are you assuming partial take-up?

**The Chair:** You have about 30 seconds to answer that question.

**Mr. Levesque:** We're looking at our fire and police departments, the fire associations and police associations, asking for the benefits that will provide them with 50 and out, 25 years and out, 30 years and out; those kinds of enhanced benefits that are being talked about in the OMERS plan, what we've seen today so far in writing. We're looking at those things being implemented, and those are the costs that we've been able to attach through our finance department.

**Mr. Duguid:** It sounds to me like a worst-case scenario, but okay. Thank you.



**The Chair:** Thank you very much for being here today. We really appreciate your being here and making the drive.

**Mr. Levesque:** Thank you very much.

**The Chair:** The city of St. Catharines is next.

**Mr. John O'Toole (Durham):** Chair, I'd like to ask a question. On that \$1.2 million, what would be the impact on their tax base, given there are only 8,000 residents and 4,000 rental units.

**Mr. Levesque:** A per cent and a half on our tax base.

**Mr. O'Toole:** Seven and a half per cent?

**Interjection:** One and a half per cent.

**Mr. O'Toole:** One and a half.

**The Chair:** Can we ask research to provide that information? Thank you.

### CITY OF ST. CATHARINES

**The Chair:** Thank you very much for being here. We appreciate you coming to speak before us this morning. Could you identify yourself and the city you speak for before you begin? After you begin speaking, you'll have 15 minutes. If you leave time, we'll get an opportunity to ask you questions.

**Mr. Kenneth Todd:** Thank you, Madam Chair, and thank you for allowing us the opportunity. My name's Ken Todd. I'm the director of corporate services with the city of St. Catharines, and part of that role includes my responsibility for the human resources function of the city. I'm here today representing Mayor Tim Rigby and members of city council.

The city of St. Catharines did present a formal brief, a written submission, to the standing committee back in November 2005. I'm just here to further elaborate on that submission. I do not have any further written submission for you today. But I would like to provide some feedback on five specific issues that are important to the city of St. Catharines in terms of this proposed legislation. They relate to governance, representation, supplemental plans and the dispute mechanisms and, finally, the financial impacts.

The first issue of governance or autonomy certainly was something that was not unwelcome by many employers in the municipal sector, with the feeling that the province truly does not need to be in the business of municipal pension benefits. As such, in terms of moving over to the sponsorship committee as proposed by the legislation, it is not something that the city of St. Catharines is concerned about. But our concern is that in the proposed legislation, as the province walks away from being the sponsor now, it is getting involved in some of the plan design and benefits that are included. In particular, what is probably our major concern out of this is the move toward supplemental plans. I'll get back to that in a few minutes.

With respect to the governance issue, in terms of the city of St. Catharines, we are not concerned about a movement away from the province's control over the plan to a sponsorship committee, but we don't feel that

it's appropriate for the province, as it lets go of that responsibility, to place additional restrictions or conditions on that sponsorship committee before it even gets started.

In terms of representation under the plan, in the proposed legislation, the sponsorship committee calls for an eight-member representation of employers and employees. In looking at that—and I'm sure you're going to hear this from other groups—we feel that the representation is dramatically skewed toward certain groups in the plan. For example, CUPE, which has about 45% of the members in the plan, gets one member. Fire has 4.75% of the members, and they get one member. They have about one tenth of the representation that CUPE has, yet they have one full member at the table. In addition, the police have about 10% of the members in the plan and they get one representative as well. The non-union groups, which many small municipalities across the province have, represent about 20% of members in the plan, yet they get no representation other than the possibility of somebody representing them through the three at-large members.

We truly feel that the representation as proposed in the plan is skewed. In our mind, it is skewed heavily toward fire and police. I think that tends to be the tone throughout the legislation, not only in terms of representation but also of supplemental plans. There's a fair number of other employees who work for both the municipalities and other municipal sectors beyond just the fire and police group. Our municipality, for example, has approximately 800 full-time employees and, of that, about 155 would fall under the fire realm.

In terms of supplemental plans—and I think this is probably the single most important issue by far that you are hearing and are going to continue to hear from municipalities—it's our opinion that the province should simply stay out of the business of directing where and when these supplemental plans should take place. It's our feeling that this should be the role of the sponsorship committee. You are turning over the responsibility of this plan to that committee, and our feeling is that you should let them do their job.

### 1040

In terms of our concern over it—I'm just going to read part of a letter that came to us from the honourable Minister of Municipal Affairs back in December. In that letter he indicates that, "If Bill 206 is passed, it will not"—and that is highlighted, the word "not"—"impose any new cost or pension benefits on any employer or employee. It will require that the proposed new sponsors committee set up, within 24 months, the supplemental benefit plan that will include the optional pension benefits outlined in the bill." In terms of reality—and I think you've already heard from Mr. Levesque—that is probably the furthest thing from reality in terms of what happens out there in the arbitration process.

You saw recently the city of Toronto going through a very complex issue with bargaining that evolved around what they called "retention pay." That's one small example of where an issue gets started in one municipality and



then really just spreads like wildfire throughout the province. Municipalities all across the province now are facing a 3%, 6% and 9% increase in firefighter and police wages, where there was an issue that started in the city of Toronto relating to retention. Once it catches hold in several municipalities the arbitrators take a very different view, going away from an issue like retention, and all of a sudden it gets reformed into: This becomes a benefit, this becomes part of wages and it becomes part of the normal compensation package. In our mind, once it goes out of the realm of the sponsorship committee and back to local bargaining—we would not have this problem with CUPE. CUPE has the right to strike; they do not have binding arbitration. Where you have a binding arbitration situation like fire and police, that control will be turned over to that arbitrator. I can tell you, municipalities will not be able to afford this, and I'll get to that a little bit further. In our mind, with all due respect to the minister, it's a very naive and unrealistic view of what will happen in the arbitration process.

I've been involved with negotiating fire agreements for approximately the last 25 years. In terms of how those settlements take place, just to give you a brief example: Arbitrators are supposed to effect a settlement that could have reasonably been expected to be negotiated by the parties in a free and open system. In our last two trips, the firefighters received 11% over two years; the rest of the employees got 6% over those same two years. In our last arbitration award, firefighters got 10% over three years, and our CUPE and management employees were getting approximately 6%. So over that 15 years in those firefighter settlements, the firefighters have gained wage advantages of about 10% over what was freely negotiated in a situation where the other employees had the ability to strike, and that's just the reality in this province with respect to the arbitration process. I could probably spend a lot more time on that, but I think it makes our point.

The arbitration process simply takes the control out of the municipalities' hands, and again, it's not the same kind of benefit that would be afforded to other employees. Here we are, setting up a supplemental plan for two specific sectors—three, if you look at the paramedics—which would not be available to other employees, who do very meaningful work for us as well.

I know you were interested in Owen Sound's costs, and I'd like to give you some indication of what our costs are and to answer the question that was answered earlier. We have done our estimates based on what we think the potential impact will be if supplemental benefits are awarded through an arbitration process. There are two main points. One is the accrual rate of 2.33%. Currently, the accrual rate for our pension plan is 2%, so it's 2% times your years of service. You can max out at 70% of your best five years' salary. That is the pension plan as it exists now. This proposal would take that accrual rate up to 2.33%, which would add additional benefit to those employees.

There are other provisions there that have been talked about, in terms of 25 and out with full benefits. We have

costed that. These costs have come from our municipal treasury people. In terms of St. Catharines, if those supplemental benefits that I just outlined are awarded by an arbitrator, it would increase our pension costs for fire by 101.5%. That would represent \$1.37 million for the city of St. Catharines. It would be an increase, bottom line, of 2.5% on every taxpayer in the municipality and represent a \$22-per-household increase for every household in St. Catharines.

Our concern is, we do not have a lot of new supplemental growth in St. Catharines. We are caught by new provincial legislation in terms of the new greenbelt plan coming out, which our council is supportive of, in trying to focus and concentrate growth. Our municipality is at its borders. We cannot expand further. We do not have the opportunity, like some of the high-growth areas around Toronto, to have supplemental growth that offsets some of our additional costs in any given budget year. If we're forced by an arbitrator to add \$22 per household on every household in the city, that takes away from other services that we are going to be able to provide to our constituents, whether that be recreational services, whether it be sewer and water improvements, road improvements or any other service that we provide. We are going to be having to look at reduced funding in those areas in order—because if we're arbitrated to award this, we do not have a choice. It's something that we will not have the flexibility to say, "No, we're not going to fund that."

I find it's very ironic, I guess, in a way that, after all the years that the province has controlled the pension plan—supplemental plans were something up to this point that the province indicated it would not get into, simply because it had too much potential impact on the taxpayers. But here we are, on the eve of the plan being transferred over to a sponsorship group, and the province is allowing the mechanisms for that exact thing to happen.

This will have far-reaching impacts beyond the municipal sector. You can be assured that as soon as these awards are given municipally, the OPP is going to be there, standing in line. You're going to have your nurses standing in line, and the trend will just continue. This will not stop, in our opinion, at impacting just the municipal sector. Our feeling is that these proposed amendments have far-reaching impact and far-reaching financial impacts across the province.

I thank you for your time, and I'd be happy to answer any questions.

**The Chair:** You've left about a minute for each party to ask a question. Ms. Horwath.

**Ms. Horwath:** I just wanted to ask a question around the arbitration issue. What percentage of your collective agreements with firefighters or police—maybe both—end up in arbitration, and how many are negotiated, historically?

**Mr. Todd:** Historically, I would say probably about one in three. We're actually going to arbitration right now. We're going to arbitration over a trend that started in the province with respect to retention pay, where our



firefighters' expectation right now is probably around 14%. That is significantly beyond what any other employee group has negotiated. Our success at arbitration has not traditionally been good.

**Ms. Horwath:** So one in three go to arbitration?

**Mr. Todd:** About one in three go to arbitration.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Thank you for taking the time to join us today and make your submission. We did listen very carefully to your comments. I guess the one thing that I would point out—and I'd ask you to stick around, if you could, to at least hear the Police Association of Ontario's deputation, because if I have time to ask a question there, I'll be asking them a question to try to give you some comfort. I'll ask you to review some of the previous testimony from both the police association and the fire association, who all have indicated that the idea of full take-up of these benefits is completely unrealistic. In fact, it would be cost-prohibitive to their own members, especially at a time when the basic plan costs are increasing. So I understand your concern. You're looking ahead, trying to see what kinds of costs may be anticipated. But I ask you as well, when you're talking about the impact on tax increases, to be realistic and not use the full worst-case scenario, which has been proven totally unrealistic. I ask you to take that into consideration too.

1050

**Mr. Todd:** If I could just give a brief response, our position is that the pension plan as it exists now for all employees, regardless of what take-up there would be under Bill 206, is a very, very good plan that provides very good pension benefits for all our employees. We do not feel at this time that there needs to be any notion of supplemental benefits awarded. When you look at most of our taxpayers, I don't think the majority of them have the same level or types of benefits that employees in the municipal sector currently have under the OMERS plan.

**The Chair:** Mr. Ouellette.

**Mr. Jerry J. Ouellette (Oshawa):** You mentioned the fact that firemen represented 4.5%, the police represented 10% and CUPE represented 45%, and each had a single member.

**Mr. Todd:** Yes.

**Mr. Ouellette:** What do you think the representation should be?

**Mr. Todd:** Our feeling is that what I'll call the non-union group, the group that is not represented by any association or bargaining unit, should certainly have some representation at the table. They have 20% of the plan members and do not have any representation in the present proposal.

**Mr. Ouellette:** What do you think the makeup should be, then?

**Mr. Todd:** In terms of the makeup, I certainly think they should be given a seat. I'm not sure that fire and police, simply in terms of their proportion in the plan, should have two members when those two members only represent about 14% to 15% of the plan membership.

**The Chair:** Thank you very much for being here today.

## ONTARIO ASSOCIATION OF POLICE SERVICES BOARDS

**The Chair:** The next group before us is the Ontario Association of Police Services Boards. Mr. Mukherjee, good morning and welcome. After you've introduced yourself and the group you speak for, you know the drill. If you leave us time at the end of 15 minutes, we'll be able to ask you questions.

**Dr. Alok Mukherjee:** Madam Chair and members of the committee, my name is Alok Mukherjee. I'm a director of the Ontario Association of Police Services Boards and chair of the Toronto Police Services Board. I have with me Barbara Hume-Wright, who is the executive director of the OAPSB.

I'm here today to speak on behalf of the 56 police services boards, whose employees make up about 10% of the membership of OMERS, about our profound concerns about the impact of Bill 206 and its very real potential to result in significant costs to municipal taxpayers, and to ask that you proceed very cautiously with the bill.

Established over 43 years ago, the OAPSB is an organization of civilian police governance boards across Ontario. Well over 85% of all police services boards in Ontario are members of the OAPSB, ranging from every large urban municipal board to the majority of the smaller section 10 boards. We represent the vast majority of police employers in the province.

The OAPSB recognizes that the province has goals that it wants to achieve through Bill 206. We would respectfully argue for the need to proceed with care in order to avoid any mistakes with a \$36-billion pension plan affecting over 355,000 employees and 900 employers. When devolution was originally proposed in 2002, the OAPSB supported it, recognizing that there were some legislative matters that needed to be addressed; for example, aligning control and ownership of the plan, and improvements to the appointments process.

But in 2002, OMERS was in a very different financial situation. The OMERS plan had a surplus and a contribution holiday. Today it has a \$2.5-billion deficit, which has necessitated a 9% increase in contribution rates, or \$137 million in new municipal expenditures this year, with similar increases projected for future years. This is a new \$137-million burden on property taxpayers, not one cent of which will go toward addressing any of the many challenges the police services boards face in keeping our communities safe.

The OAPSB is concerned about the undue rush to reform one of Canada's most important pension funds. The wholesale restructuring of something as complex and as important as OMERS ought to be thoroughly considered and carefully carried out. Since the release of Bill 206, the OAPSB has worked with other employers to try to prepare a credible analysis of this bill, and our review of the latest version of the bill continues to cause us great concern. Bill 206, as it is now amended, is in some ways even more flawed than the first draft because it fails to achieve the goals that we assume the



government set out to achieve; namely, an autonomous pension plan built on sound governance principles that will not unduly burden property taxpayers or members of the plan. Unless they are thoroughly addressed, these failures will have significant repercussions on this government, on the property taxpayer and on the people who depend on this pension plan.

At a minimum, the OAPSB position is that Bill 206 must be further amended to (1) eliminate the reference to police, fire and ambulance employees in sections 4 and 10, permitting the establishment of supplemental plans and legislating supplemental benefits; (2) make it clear that the sponsors corporation may not, subject to appropriate exceptions, implement changes in benefits for members or in contribution rates, by bylaw or otherwise, more frequently than triennially; and (3) totally eliminate the dispute resolution clauses in the bill.

I would like to acknowledge that some important changes have been proposed that would benefit employers, employees and property taxpayers. Of particular importance to the OAPSB is the amendment in section 9 that properly reflects a greater degree of autonomy. I would like to thank the standing committee for removing the requirement that all benefit plans be defined benefit plans. We appreciate the fact that the standing committee is looking to the future and the need to provide for flexibility to help ensure the long-term viability of the pension plan for its current and future members. I would also like to acknowledge the standing committee's responsiveness to amendments with regard to role clarity and distinction between the administration corporation and the sponsors corporation, proposed by OMERS and supported by us.

It does appear that the standing committee has listened to OMERS and has adopted many of its recommended amendments. Any continued perceived ambiguity and overlap vis-à-vis the roles of the sponsors corporation and the administration corporation is a very serious matter that will severely hamper the operation of OMERS. The OAPSB encourages the standing committee to carry out one last review of the bill to absolutely ensure role distinction and clarity.

The standing committee also heard our concerns with regard to the need to change the voting protocol and require a two-thirds majority vote of the sponsors corporation board for specified changes to the benefits plan. We acknowledge this progress and would encourage the standing committee to go further to ensure the long-term viability and affordability of the OMERS pension plan.

OMERS is not like other pension plans that the province has devolved. It has an extremely diverse range of employees and employers, including police services, whose employees make up about 10% of the OMERS plan. The government has characterized Bill 206 as an autonomy bill, yet the bill is not offering autonomy. It dictates detailed requirements, such as supplemental plans, and has the province naming the first appointees to the sponsors corporation and administration corporation

boards. Where is the autonomy when it is the province that will make direct appointments to the initial boards of these two corporations?

If devolution proceeds, the government must, at a minimum, give sponsors lead time of 12 to 18 months following royal assent to prepare to take on new sponsorship responsibilities. Furthermore, funding to enable stakeholders to adequately prepare for devolution needs to be addressed, with start-up costs alone estimated at somewhere between \$5 million and \$10 million. The government paid for transition costs in the devolution of the Ontario teachers' pension plan and the OPSEU pension trust, and it must do the same for OMERS.

#### 1100

Bill 206 provides for supplemental plans, and with its amendments, the standing committee has extended those benefits to paramedics. It has gone further, to prescribe specific benefits that will have to be created within 24 months. The specific benefits set out in section 10.1 include 2.33% accrual on a go-forward basis, factor 85/80, and final averaged earnings of three or four years. The only accommodation that has been made to the employers is to limit one new benefit per local decision, but all that will result in is a series of one-year contracts until all benefits are built into the collective agreements of every police, fire and paramedic contract across Ontario. It is even conceivable that an employee who changes employers over the course of his career would have access to several different supplemental plans under a number of collective agreements.

The logistical challenges of supplemental plans are considerable and complex. All local supplemental plans—and they will be considerable in number when one considers the number of local collective agreements between fire, police and paramedic unions—would have to be managed and administered by OMERS on behalf of approximately 900 employer groups, not to mention the anticipated significant increase in actuarial and technology costs. The endless retirement benefits contemplated in this bill through supplemental plans will impact the base plan and will whipsaw across the entire public sector, including provincial services such as the Ontario Provincial Police. The standing committee is in a position to address this costly and unnecessary domino effect before it starts.

Minister Gerretsen has expressed confidence that municipal sector employers will negotiate fair and reasonable contracts. However, the employee associations have already made it clear that they will hold up this legislation to arbitrators as a promise for these enhanced retirement benefits. If Bill 206 is truly about OMERS autonomy, it must not impose any requirement on the sponsors corporation to consider supplemental plans. In a true autonomy model, these decisions would be left up to a sponsors corporation, not imposed by the province through legislation.

If Bill 206 is truly about OMERS autonomy, then section 45.1, which provides for transitional provincial regulation-making authority for establishing supplement-



tal plans for a period of up to 36 months following proclamation, would not be a part of this amended bill.

It is difficult to understand why the province is proposing to apply a collective bargaining model to the management of a \$36-billion pension fund. Negotiating a \$36-billion pension fund in a binding arbitration environment will not work and essentially puts governance into the hands of an arbitrator. The OAPSB cannot support such a dispute resolution model. This approach is definitely not in the public interest and will prove disastrous for property taxpayers. It could also very well make the pension benefit unaffordable to its members.

Under Bill 206, an arbitrator would have a significant impact on the police services budget and the board's ability to deliver front-line policing in an affordable, efficient and effective manner. Our experience strongly suggests that the arbitrator will not have any regard for tax increases or the reduction of staffing and services required to accommodate his decision. The arbitrator will certainly not be accountable to the public, the taxpayers or the employees. If an arbitration decision on supplemental benefits is rendered at the sponsors level, then arbitration at the local level will happen with great ease. It is our experience that arbitration decisions are replicated across the province.

The standing committee has amended the bill to legislate the specific benefits that must be provided for by the sponsors corporation and has set out a timeline for such benefits provisions to be available, so why, with this requirement, are the arbitration provisions still in Bill 206? In fact, with the supplemental plan provisions in the bill, one has to question the need for the fire, police and ambulance advisory committee as well.

We asked our members to do their own costing analysis based on the potential impact of supplemental plans. In most communities, it is estimated that such costs will result in property tax increases of at least 3%. On a province-wide basis, that would amount to about \$380 million a year, without a single penny going toward addressing any public service needs and without factoring in the addition of paramedics to the calculations. Property tax dollars directed to pay for the province's decision to force supplemental plans will take municipal funds away from infrastructure and service requirements in every part of Ontario.

**The Chair:** Mr. Mukherjee, you have one minute left.

**Dr. Mukherjee:** I'll try and speed up. Thanks.

How can the province explain its decision to take an additional \$380 million a year from Ontario's property taxpayers and give them nothing in return but the promise of a further escalation in costs? This money will not fund any new policing initiatives, nor will it enhance community safety. It will in fact take officers off the street. It is \$380 million a year in unnecessary costs for municipal property taxpayers, legislated by the province to enrich retirement benefits in a system that is already the envy of public and private sector employees everywhere.

Labour costs associated with emergency services are already increasing much more rapidly than other labour costs for municipalities across Ontario. Emergency services are consuming an increasing proportion of municipal budgets, constraining the ability of municipalities to fund other programs. Minister Gerretsen has indicated that supplemental plans are necessary to recognize the important and dangerous work of our emergency workers, but emergency workers are already being compensated well above that which other municipal workers receive. I have some figures in the written presentation that you have.

**The Chair:** Mr. Mukherjee, are you wrapping up?

**Dr. Mukherjee:** I'm wrapping up.

**The Chair:** Good. You've exhausted your time, so if you could just do your final statement, please.

**Dr. Mukherjee:** I just want you to know that of the \$380 million that would be the extra cost on us, the share of it for Toronto police would be sufficient to hire 374 extra officers. We find it ironic that, on the one hand, the government has funded the hiring of extra officers—250 in our case—but on the other, the cost of this will prevent us from hiring more officers.

In conclusion, OMERS is a key player in the health and growth of Ontario's economy. We don't know why there is a need to interfere with this pension plan in this manner at this time. We would urge you to take the time to get this bill right, considering the best interests of the hundreds of thousands of Ontarians who depend or will depend on OMERS for their retirement.

Thank you.

**The Chair:** You've exhausted your time. There isn't an opportunity to ask questions. We appreciate you being here today. Thank you very much.

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## COUNTY OF HASTINGS

**The Chair:** Our next delegation is the county of Hastings. Good morning, and welcome. If you'll all be speaking, could you identify who is with you this morning and, after you have identified yourselves and the community that you speak for, you'll have 15 minutes. If you leave us some time at the end, we'll be able to ask you questions.

**Mr. Clarence Zieman:** Good morning, Madam Chair and members of the committee. My name is Clarence Zieman. I'm the warden of Hastings county and mayor of the town of Deseronto. With me today is Charles Mullett, past warden of the county of Hastings and mayor of the town of Bancroft. Charles and I will be sharing our presentation to you today. We are also accompanied by Susan Horwood, our county treasurer and director of finance.

We appreciate the opportunity to appear before you today to discuss our concerns with Bill 206. Our time is short, so let me be direct. My colleagues and I of Hastings county continue to have a very serious concern about this bill. We also share the view that the Eastern



Ontario Wardens' Caucus and AMO hold on Bill 206. Let me be clear: We do not support this bill. Let me tell you why.

First and foremost, the property taxpayers we represent in Hastings county cannot and should not bear the financial burdens this bill will impose upon them. There is nothing in it for them except new costs to be borne. It should be no surprise to any members of the standing committee that our property taxpayers are increasingly voicing their concerns about how much more they can pay to support local services. We hear it week in and week out at our council meetings. Our taxpayers understand that their contributions fund services like roads and bridges, garbage collection and recreational programs. I believe they are also beginning to understand the significant amounts of property taxes that are subsidizing provincial programs like social services, ambulance and disability programs. That subsidy now stands at \$3.2 billion annually, according to AMO.

Charles and I, along with our colleagues at county council, also know that our taxpayers expect something in return for their taxes. We are reminded of that every day. They expect services. They will not be happy to learn that the new costs associated with enhancing municipal employee pension plans will bring absolutely no benefit to them. There will be no additional affordable housing units constructed, no additional ambulances purchased, no more fire trucks added to the fleets and certainly no more roads repaired as a result of paying the higher pension premiums. In short, property taxpayers will simply pay more. They will not be pleased. In fact, we are already hearing on the streets and in the coffee shops their concerns as they become aware of this bill.

Our county has examined the costs of the possible supplemental pension plans identified by OMERS. As we understand it, the province has not released any financial data that might have helped our analysis. I understand that AMO continues to seek your data in order to assess it, but to no avail at this time. The costs are significant. Our staff have determined that the county of Hastings could face annual new costs of more than \$1 million when all our employee groups are factored in. That represents a 5% property tax increase. Across eastern Ontario, the wardens' caucus estimates that nearly \$11 million per year may have to go toward pension premiums at the upper tier alone. We understand that in the city of Ottawa, their calculations indicate additional premium charges of over \$23 million annually.

**Mr. Charles Mullett:** The county of Hastings and the Eastern Ontario Wardens' Caucus, in which we are active members, have good reason to question the logic and the potential huge new taxpayer burden this bill will create. As some of you know, we have spent considerable effort over the past four years to document the many financial challenges we face in our part of the province. Let me mention just a few of the systemic problems.

In eastern Ontario it is the homeowner who bears the largest tax burden: 94.7% of all local assessment is residential. In Hastings county, residential taxpayers pay

93.5% of all property taxes. Across the east, commercial assessment accounts for 4.9% of total assessment, while industrial accounts for only 1.4%. In our county, it's 1.5% industrial and 5% commercial. When you superimpose the fact that family incomes across our region are on average 19% lower than in other parts of Ontario, you can quickly understand why we hear in our council chambers the people's concerns about increasing taxes.

The assessment situation will continue to be a real concern for us. The trend is downwards rather than up for new, real growth. In 2003-04 it was less than 2%, and in 2005 it was 1.3%.

The taxpayer is reaching the breaking point. The total county levy for our Eastern Ontario Wardens' Caucus members has grown by 25% in the past three years, from \$185 million to \$235 million. Is there any wonder why we are concerned about new potential costs to the taxpayers in our communities?

As counties, we are extremely vulnerable to changes in programs like land ambulance, where the increasing costs of wages and equipment are not being matched by funding from the province. Almost all of the 13 members of the Eastern Ontario Wardens' Caucus now finance 60% of the costs. The province has retreated to paying 40% rather than the agreed 50-50 sharing.

In our case specifically, the province is paying only 40% of our ambulance costs. In 2001, the total ambulance budget was \$4.76 million. The province paid \$2.4 million, as we did. Last year, our total costs had risen to \$8.95 million as we struggled to meet legislated response times and salary increases. We paid \$5.73 million while the province retreated to \$3.5 million.

How can we justify, or more importantly, how can you justify the new tax burden Bill 206 will impose on our ratepayers? Make no mistake that the bill, as currently drafted, will lead to new costs for pension benefits.

If we learned one thing from the last eight years, the cost of radical change has been significant. We are still paying dearly for the downloading of social services, social housing and ambulance services on to the property tax bill, not to mention the 1,300 kilometres of former provincial highways.

According to AMO, the potential new supplemental plans contained in the first reading version of Bill 206 meant a further hit of some \$380 million annually on the property taxpayer. That estimate now approaches some \$500 million annually as a result of the changes at second reading. One thing is clear: The money will not be used to fund existing services or repair our crumbling infrastructure.

We know from recent studies that there is an annual \$1.2-billion investment gap in water and sewer systems across Ontario. When you add the 9% premium increase for all municipalities next year, which is \$66 million, and the annual estimate for the cost of the new supplemental plans—\$500 million—that is in excess of half a billion dollars that will be unavailable for these key services.

Beyond the financial crisis this bill will cause, I and my county council colleagues ask, why are we here in the



first place? Who asked for these changes? We certainly did not. Is it because of perceived recruitment problems? We don't think so, because none of us is having any problem recruiting new staff because of a bad pension plan. We have not had one potential employee tell us that they were not going to sign on with any of our counties because of a poor pension plan. Clearly, something else is at play.

In speaking directly to the bill as it has been amended, we continue to have real concerns about the decision-making process written into it. Employing mediation and arbitration where a two-thirds majority on benefit improvements is not reached is an unusual model for decision-making. This labour relations approach does not appear anywhere else in devolved public pension administration, as far as those more knowledgeable than us know. The typical model is for 100% approval by a sponsors corporation for benefit changes. As AMO has pointed out, the model should be unanimous agreement to implement a fundamental change to the plan. We support AMO's view. The standard must be higher.

The mechanism for resolving disputes, namely, binding arbitration, is a significant flaw in the bill. Putting the governance of such an important plan in the hands of arbitrators is wrong. Their decisions will have a direct effect on our property taxpayers, because experience shows us that arbitrated decisions quickly find their way into collective agreements.

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**Mr. Zieman:** As I stated at the beginning, the county of Hastings does not support this bill as it is currently drafted. If the government insists on pushing it through the Legislature, significant changes must be made to it. More specifically, we recommend the changes included in the appendix attached, which are directed toward the governance and arbitration components.

Let me end with a short illustration of the financial impacts on my county. First, we already know that our regular annual OMERS premium is going up by \$125,000 in 2006. To some of you, \$125,000 might not sound like much, but in Hastings county it represents a 1.25% tax increase.

Second, we have costed all of the 10 supplemental plans identified by OMERS that would be possible as a result of Bill 206. Those costs range from \$95,000 to well over \$1 million annually, and would have to be added to the county's budget. That translates into \$17 per household at the top end, and when you add in my town's costs of \$23.30, our taxpayers will be taking a hit of \$41.30 per household. That is unacceptable, especially when there is no return through improved municipal services.

The county, along with all 13 members of the Eastern Ontario Wardens' Caucus, faces a similar scenario of rising property taxes to pay premiums for supplemental plans. We ask you to consider our situation. With a shortfall of \$19.5 million for services downloaded by the last government and the looming loss of \$17 million in provincial transfers by 2008 under this government's

OMPF program, eastern Ontario counties are in a financial crisis.

Having the new costs of this ill-advised bill and the ongoing costs of subsidizing social programs is like being tackled and then being piled on. Our taxpayers cannot and should not bear this new burden that Bill 206 will create. You would be well advised to listen to municipalities before you move any further forward.

Thank you. We're open for questions.

**The Chair:** You've left about a minute for each party. Mr. Rinaldi.

**Mr. Lou Rinaldi (Northumberland):** Thank you very much, Warden. It's good to see you here. It seems we were together just a couple of days ago.

**Mr. Zieman:** Right on. It's nice to see you here.

**Mr. Rinaldi:** Mr. Mullett, just a clarification; I stand to be corrected. In your submission when you presented last time under the Eastern Ontario Wardens' Conference, your recommendation was to scrap the simple majority and go to a minimum two-thirds majority. I believe that's what was in your submission; I know I read it fairly intensively, being close to you. Yet, in this submission today from Hastings, you're saying, "That's no good. We need an absolute majority, unanimity." Can you explain why the change?

**Mr. Mullett:** I would suggest, Mr. Rinaldi, that looking at two thirds and looking at the unanimity of the whole thing, the consensus of all parties should be there.

**Mr. Rinaldi:** Okay. All I was questioning was that it's changed from the eastern Ontario wardens' presentation to today's. What caused that change?

**Mr. Mullett:** I would say that Hastings county has a little bit of a different opinion. That's basically all. We would like to have closer control of it.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for presenting on behalf of the eastern wardens.

This morning I heard someone suggest that the eastern wardens had had a presentation on this bill from the minister, who was introducing it, or at least he had spoken to representatives of the eastern wardens, and that there had been unanimous consent on second reading of the bill, on behalf of everyone, the way the bill was written. I just wanted to make sure for the record that that wasn't the case. In fact, we've expressed a lot of concerns about the bill and, as the opposition, we have never supported the bill unanimously, to get it here or anywhere else. I just wanted to point that out.

Again, on the total process: Could you tell me in just a few words what you see as the reason for this bill being before us at all? Do you see a need for this to happen?

**Mr. Mullett:** If you're asking me, Mr. Hardeman, I don't see a need for it at all. I think it should stay the way it's presently operated.

**The Chair:** Ms. Horwath.

**Ms. Horwath:** I wanted to ask you about your perspective when you talk about the final, all-in costs if all of the supplemental plans were taken advantage of to their fullest extent. Two questions around that: One is, do



you really believe that that would happen almost immediately within the first year or two? The second question is, do you think that there's any counter-pressure in terms of a member's ability to pay their portion of any supplementals?

**Mr. Zieman:** I would only guess on that part of it. I think that our wages in the eastern portion of Ontario are much lower than they are here. I would suspect that some of the members would have a problem with paying that extra cost. I would like to ask our treasurer and director of finance, Mrs. Horwood, if she has any comments on that.

**Mrs. Susan Horwood:** The costs we provided, that ranged from roughly \$100,000 to \$1 million, were individual. Each of the 10 supplemental plans were costed separately. Under the best-case scenario, where solvency was removed, we would be paying over \$100,000 a year for any of those benefits, and the piggybacking would increase the costs.

So over time, yes, I do believe that they would come in. We would be into the one-year contracts where they get one supplemental plan followed by a further supplemental plan the next year.

**Ms. Horwath:** And you don't think those increases would be in any way counterbalanced by the fact that plan members would also be paying in, and so that would then perhaps be a deterrent for them to be asking for the moon?

**Mrs. Horwood:** I would suggest that when the first group that wants it goes to arbitration and gets it, it will fall into all the contracts.

**The Chair:** Thank you very much for being here today.

#### CITY OF BRAMPTON

**The Chair:** Our next delegation is the city of Brampton. Welcome. If you can identify the speakers today for Hansard. When you do begin, after you have introduced yourself and the organization you speak for, you'll have 15 minutes. If you leave time, we'll be able to ask questions.

**Ms. Sandra Hames:** Thank you. Good morning, Madam Chair and members of committee. My name is Sandra Hames, and I'm a councillor in the city of Brampton. With me today to my right is Marilyn Lembke; she's the manager of compensation and benefits at the city of Brampton. To my left is Deborah Reader, assistant to the city manager.

I've lived in Brampton for over 30 years, and I've been very proud to represent its taxpayers as a city councillor, since 1991. I also represent Brampton on the board of directors for the Association of Municipalities of Ontario, and I currently serve as chair of the Large Urban Caucus on that association.

On behalf of Mayor Fennell, who couldn't be here today, and Brampton council, I want to thank you for giving me this opportunity to bring our concerns and recommendations to you for Bill 206. My purpose today is to inform you of the position that Brampton council

has taken on Bill 206 and to let you know that, as an employer member of OMERS, the city of Brampton supports AMO's position on Bill 206.

I will outline Brampton's concerns on the bill, and in particular, the impact on the business and residential taxpayers of Brampton should this bill be implemented as it has been amended at second reading. Finally, I'll provide you with our recommendations on the bill.

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Brampton council has reviewed the financial impacts of Bill 206 and agree that it could not responsibly support the proposed changes to OMERS for the costs that will be passed on to Brampton taxpayers. As an employer member of OMERS, we agree with the issues that have been raised by AMO. Therefore, Brampton council passed a resolution at its meeting on November 14, which you would have received in our earlier submission, requesting the provincial government to reconsider proceeding with Bill 206 in its current form. The city of Brampton did in fact provide comment to that first standing committee, which you all should have received.

Once Bill 206 was amended at second reading and our review of these amendments was completed, Brampton council passed a further resolution on January 16 to continue to support AMO's position.

Brampton's review of Bill 206, as amended at second reading, recognizes three concerns:

(1) That supplementary plans shall be established within 24 months from when the act comes into force for police, fire and paramedics;

(2) That the bill continues to provide binding mediation or arbitration to resolve disputes at the sponsor corporation level; and

(3) The overall cost impact to the municipality from this legislation that will be passed on to Brampton taxpayers.

I will outline our concern with each of these issues in the next few pages.

The amendments to Bill 206 that were made at second reading now require that supplemental plans be established within 24 months from when the act comes into force for police, fire and paramedics. Also, the newly amended bill limits one supplemental plan per negotiated collective agreement that has the potential to diminish long-term collective agreements. It continues to provide for binding mediation-arbitration at the sponsor's corporation level.

The decisions for contribution rates and supplemental plans are now out of the board's control and become the award of an arbitrator. This award will have a direct impact on the municipal tax rate, where the cost is borne by the taxpayer, without consideration of the municipality's affordability or budgeting process.

Costs associated with the establishment of a sponsors corporation are estimated by OMERS to be between \$5 million and \$15 million, funded through OMERS. Employers and employees will be responsible for increased administration costs, resulting in contribution increases and raising municipal tax rates.



Supplemental plans for fire employees alone, based on Brampton's 2005 complement, represent a total increase of \$2.5 million, or a 101% increase to the corporation's contributions to OMERS, and this doesn't include the regional levy for police and ambulance costs.

Other potential costs to a municipality that are passed on to the taxpayer include increased administration costs for OMERS, potential costs of acquiring the necessary pension/actuarial expertise and potential higher wage increases that may be negotiated to offset the extra costs to the employees of supplemental plans.

After Brampton reviewed these financial impacts and the costs that will be passed on to Brampton taxpayers, it was agreed that council could not responsibly support the proposed changes to OMERS.

Before the bill proceeds to royal assent, the city of Brampton recommends that the province undertake a financial and logistical impact study of the proposed changes to the structure of OMERS. We ask the province to consider in this review the original intent of the devolution of OMERS for autonomy in the composition and decision-making processes for the sponsors corporation. The simple majority vote and its implication for binding arbitration should be eliminated for the sponsors corporation to operate efficiently.

Lastly, we ask that you remove supplemental plans, due to the potential cost impacts that these will have on the city of Brampton and our citizens.

Finally, I did present to you in the package a letter from Michael Luchenski, the president of the Brampton Board of Trade. I would just like to highlight a couple of paragraphs in that letter. In the first paragraph: "In particular, we are concerned about the serious financial implications that this proposed legislation will have for municipalities and ultimately for businesses and residential taxpayers."

In the last paragraph: "In recent years, our municipality and many others throughout Ontario have experienced significant tax increases that impose an increasingly heavy burden on business and residential taxpayers. The proposed Bill 206 to reform OMERS legislation will exacerbate these increases, with no additional benefit or value in programs, services or infrastructure to taxpayers. Bill 206 will have the effect of removing the related costs from the general budgetary process and thereby impose an unnecessary tax increase. This is unacceptable and detrimental to the competitiveness of our economy."

I would suggest that you read the rest of this letter from the board of trade.

I would like to thank you for your attention. We'd be happy to answer any questions that you may have.

**The Chair:** You've left two minutes for everybody to ask questions, beginning with Mr. O'Toole.

**Mr. O'Toole:** Thank you very much for your presentation. We've heard many of the same concerns. I hope that Mr. Dhillon and Mrs. Jeffrey—I see they're copied on this memo—represent their actual constituents, as opposed to the rough handling by the McGuinty

government of downloading this responsibility to the municipality.

I just want to ask one question, primarily to the staff: What per cent of your operating budget today is wages and benefits? That's a pretty standard question. It's about 75% to 80%, probably?

**Ms. Marilyn Lembke:** At this point, I think it's about 79%.

**Mr. O'Toole:** So this implication for enhancement, implicit in all municipalities, is really, ultimately, a payroll issue. Can you tell me why you believe the government is doing this? I don't see how it's affecting the vast majority of these entitlements which have been negotiated by municipalities. You've got the arbitration factor in here as well, where it takes a big part of your future costs. As I see, it's a 101% increase. These are pretty considerable. You're elected as well.

**Ms. Hames:** I believe they were doing this initially for autonomy on the OMERS board. We believe that this will not be an autonomous board. We'll be negotiating at the local level.

**Mr. O'Toole:** Do you recommend that the government completely remove and reconsider this bill?

**Ms. Hames:** We're asking that the province undertake a financial and logistical study before they proceed with the bill. We're asking them to review the original intent of the OMERS devolution bill.

**Mr. O'Toole:** I appreciate that. Thank you.

**The Chair:** Ms. Horwath.

**Ms. Horwath:** I'm wondering about your assertions on page 7, where you speak to the supplemental plans for fire employees alone creating an increase of \$2.5 million, a 101% increase in the contribution to OMERS. Can you explain where you get those figures from and what your assumptions are behind some of those calculations?

**Ms. Lembke:** We participated in a costing analysis that AMO had asked of municipalities. It was prepared by municipal finance officers. We took our current payroll, as of 2005, and we then costed out the supplemental plans of 2.33% and the 25 and out, and that came to a total of \$2.5 million, which represents a 1.67% tax increase to our taxpayers at this point. It does not take into account salary increases that have been negotiated. It was strictly based on 2005 figures. The firefighters negotiated, I think, an increase of 3.5% in 2006, and that will of course enhance or increase any of those if it goes forward.

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**Ms. Horwath:** Can I ask two things, then, in your experience with negotiations with the fire association, since we're on that as an example? First of all, to what extent do your negotiations tend to be successful in terms of gaining collective agreement, or to what extent do they end up in arbitration? Secondly, do you expect, in your experience, that the requests for supplementals may be offset by perhaps reduced requests for wages, for example, so that when you're looking at your negotiations, you're looking at a compensation package that



might—the pressure for additional supplementals might therefore be reducing the requests for wage increases?

**Ms. Lembke:** In response to your first question, of the last five collective agreements that we have negotiated with fire, four have gone to arbitration. In regard to off-setting wages, the general conversations or notes to collective agreements right now—we do not have one with our fire association, but there have been fire associations throughout the province that have requested that municipalities or the employer put in a letter that in the event that the accrual of the 2.33% goes in, the municipality or the employer will consider paying the difference. So now they're saying, "Yes, we want the 2.33%, but we also want the employer to pay the difference, what that would cost the employee."

These are areas that aren't out there a lot. We know it's been talked about in compensation groups that I've been involved in. That's another major impact to the corporation or to any employer.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** I notice on page 5 of your report, and this is what you've said as well, that you're concerned that "the newly amended bill limits one supplemental plan per negotiated collective agreement." You indicated that "that has the potential to diminish long-term collective agreements." I'm assuming that you've looked at it from the employees' side as well, because we've heard a lot from the employees' side at this committee, and there is a tolerance as to how much the employees can afford. You seem to be forgetting that anything that costs the employer is also going to cost the employee. Have you taken that into consideration at all? It seems, when you make a statement like that, that you're totally ignoring the fact that employees are not going to be able to afford to ask for all the benefits that may be available, certainly—probably ever.

**Ms. Hames:** We haven't disregarded that at all. In fact, we did say that it's an additional cost to our employees also. But the employees, especially those in a union that can negotiate an increase, will then tend to negotiate that increase to include that cost. That is our fear in the negotiated increase. Then we have on the other side the employees who are not in any union, and we have to deal with their increases as well. In the end, once one employee group negotiates an increase to deal with that supplemental, to deal with that additional cost, it reverberates to everybody in the organization to do that.

**The Chair:** Thank you.

**Mr. Duguid:** Madam—

**The Chair:** It had better be a really quick question.

**Mr. Duguid:** Just going back to page 7, where you're indicating, "Potential higher wage increases that may be negotiated to offset the ... employees of the supplemental plans," I agree with Ms. Horwath. I think it's the other way around. You're given a package that a group would come in to collective-bargain with, and in all likelihood, even an arbitrator—it's not *carte blanche*. Employees don't get everything they ask for in arbitration. You seem to be suggesting that everything employees ask for in

arbitration, they get. If that were the case, firefighters and police would be making \$200,000 and \$300,000 or more each year. Maybe they already do, but I don't think they do.

*Interjections.*

**Mr. Duguid:** Some people are nodding their heads.

**The Chair:** Ms. Hames, I'm going to let you have the last word.

**Ms. Hames:** I don't have the figures right in front of me, but four out of our last five negotiations went to arbitration, and there were substantial increases to the firefighters in that, over and above what everybody else in the corporation was receiving, in four out of the last five.

**The Chair:** Thank you very much for your delegation.

**Ms. Hames:** Thank you very much, committee, for your time.

#### POLICE ASSOCIATION OF ONTARIO

**The Chair:** Our next delegation will be the Police Association of Ontario. Good morning, and welcome. As you settle yourselves, I'm sure you've heard this a number of times, but could you introduce the individuals who will be speaking and the organization that you speak for. When you do begin, you will have 15 minutes. If you leave time, we'll be able to ask questions or make comments.

**Mr. Bruce Miller:** Thank you. Good morning. My name is Bruce Miller. I'm the chief administrative officer for the Police Association of Ontario. To my right is Bob Baltin, our president, and to my left is Dave Wilson, president of the Toronto Police Association.

The Police Association of Ontario, or PAO, is a professional organization representing 30,000 police and civilian members from every municipal police association and the Ontario Provincial Police Association. We've included further information in our brief on our organization.

We're also pleased to advise that a number of our members are in attendance today to lend their voices to this important discussion. Unfortunately, they couldn't get into the room today, but we have members here from across the province, including Brantford, Barrie, Chatham, Durham, Halton, Hamilton, London, North Bay, Niagara, Ottawa, Peel, Peterborough, south Simcoe, Sudbury, Toronto, Waterloo, York and Windsor. I apologize to those members that I've missed. We're also joined by members of the Ontario Professional Fire Fighters Association, who are here in support today.

We appreciate the opportunity to provide input into this important process. Both the OMERS board and its shareholders agree that greater autonomy over pension benefits should be provided to all municipal employees and employers. Our association has worked co-operatively with all stakeholders on the matter of OMERS autonomy. While some groups have been resistant to the government's proposals, we have worked closely with the Ontario Professional Fire Fighters Association to



forge a common position for emergency first responders. We are pleased to report that our two organizations are united and will carry forward the same message to the Ontario Legislature. We would, however, like to focus our attention on the importance of these legislative changes to the police community. As you know, we appeared before this committee on this important issue on November 23, and we have copied our previous brief for your information. We would like to use our appearance today to clarify certain issues and to answer any questions that you may have.

We would like to start by commenting on some of the unfounded claims made by some that the legislation does not have the support of all employee groups. We strongly disagree with this and are here today on behalf of our entire membership, which was united in support of this legislation.

Some employee groups would tell this committee that the proposed changes to the municipal pension plan are being done in haste and without due consideration or regard for all policy impacts. To the contrary, comprehensive consultations and discussions on OMERS autonomy have been ongoing since 1995. Despite best efforts over this period, these talks have failed to achieve results until now.

This government made a clear commitment to move this issue forward. It is indeed unfortunate that certain groups refused to participate fully in the process. Members of this Legislature are to be congratulated for considering this important legislation. It is time that corrective steps are taken to ensure that Ontario's emergency service workers do not lag behind their colleagues in other provinces and jurisdictions throughout North America.

There has been a great deal of controversy and, frankly, misinformation over the cost implications of the supplemental plans for police personnel, and we would like to set the record straight. We would also like to point out that these plans are not mandatory and must be negotiated locally to meet local needs.

We have used figures from the city of London as an example. London has 551 police officers and 176 civilian members. London is facing the same challenges with regard to violent crime as other communities across the province. Last year, London was hit with a record number of homicides. The crime rate increased; assaults on police officers rose by 98%. Two of their police officers were shot in the midst of a triple homicide, and several others were shot at in another incident. The London situation is representative of the need to ensure that police services are continually rejuvenated with front-line personnel who possess the youth and physical ability to perform their required duties.

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We have costed out the various benefits available under the supplemental plans that could be paid by both employees and employers when solvency relief is incorporated. We have also included the costs for London's fire personnel. There is a table included with our brief that lays out all the costs in a transparent manner. Frankly,

some individuals and organizations have exaggerated the cost predictions. An 80 factor for police officers works out to only \$364 per member per year. That figure is equivalent to an eyeglass coverage benefit. An 85 factor for civilians is even more affordable.

The London police service has a budget of over \$66 million. The total cost to the employer and employees of incorporating the lower retirement factors would be \$229,000 for each group. To put things further into perspective, a 2% pay raise for London police personnel equates to over \$1.2 million.

We note that AMO in their previous presentation to this standing committee estimated the cost to London for police and fire benefits to be approximately \$8.3 million. We ask you to note that these benefits are not mandated and must be negotiated locally to meet local needs. Our members pay equal contributions to that of employers and are also very conscious of increased costs. There are legislative restrictions on negotiating more than one benefit at a time. The 2.33% accrual rate and the 80 factor both promote early retirement, so there would be no need to negotiate both benefits. Finally, a four-year average's earning is also available at a lower cost.

The most costly scenario would see the following benefits available to London's police and fire: a 2.33% accrual rate for NRA 60 personnel, an 85 factor for NRA 65 personnel and the best three final average earnings for all personnel. In the highly unlikely event that all the benefits were available, the cost would come in at a little over \$2 million and is a far cry from AMO's estimate of \$8 million.

We have done similar comparisons in other locations: Aylmer, \$29,000 versus AMO's estimate of \$119,000; Brockville, \$178,000 versus AMO's estimate of \$654,000; Hamilton, \$2.8 million versus AMO's estimate of \$11.4 million; and St. Thomas, \$251,000 versus AMO's estimate of \$912,050.

As members of our community who pay taxes and raise our families, we want to ensure an affordable pension program. This bill includes reasonable safeguards to ensure an affordable program. We assert that the government's proposed changes are within reason and can be tailored to meet the needs of employers, employees and local communities.

We would also like to comment on the merits of OMERS remaining as a defined benefit plan. The PAO believes that section 9 as originally introduced should be reinstated so the statute is absolutely clear that every OMERS pension plan remains a defined benefit plan. Studies have consistently shown that defined benefit contribution plans result in significantly lower benefits than defined benefit plans, that members in defined contribution plans cannot retire due to low benefits and that administration costs associated with defined contribution plans are also much higher.

The other specific area we'd like to comment on is the CPP offset. The legislation puts a cap on the CPP offset. Our retired members have correctly pointed out that this would effectively prevent the CPP offset from ever being



brought in line with our other plans. We believe that this is an area that should be left to the sponsors corporation and would urge that the legislation be amended. We have also made some other specific recommendations for change which are included in our brief.

Police and other emergency workers are unique employer and employee groups in the OMERS pool. Improving pension benefits would help to retain experienced police personnel in today's highly competitive job market and at the same time would also help to attract qualified personnel to the profession. High-stress shift work contributes substantially to the need for an early exit option. Plans such as these also ensure that police services are continually rejuvenated with the front-line personnel who possess the youth and physical ability to perform their required duties.

The demographics of policing are changing. Ten years ago the average entry age for a new officer was 21. The Ontario Police College reports that the average entry age is now 29. This is coupled with the reality that the process of civilianization in police services has forced older officers to remain on the front lines.

Ontarians realize the challenges to community safety that police are dealing with across Ontario. We believe that Bill 206 will enhance policing and community safety, and would urge its speedy passage.

We would like to thank the members of the standing committee for the opportunity to appear before you once again and would be pleased to answer any questions you may have.

**The Chair:** You've left about a minute and a half, generally, beginning with Ms. Horwath.

**Ms. Horwath:** I'm really pleased that you put together a comparison in terms of calculations that you undertook versus calculations that we've seen from other municipalities. I'm wondering if you could give me a quick understanding of why the numbers are so different from your calculations versus the ones that were previously before the committee.

**Mr. Miller:** Other groups have costed benefits that are not on the table. I've heard groups speak of 25 and out and things of that nature that aren't being proposed. Certainly, the Minister of Finance has promised solvency relief on these supplemental plans, which is going to make things affordable not only for employees but employers as well.

**Ms. Horwath:** I have one last question. When you indicate at the beginning of your brief that all employee groups support the legislation, I don't think that that's quite true. Perhaps all employee groups that you represent across the province support the legislation.

**Mr. Miller:** Sorry. Just to clarify, if I misspoke, my point was to say that some are claiming that all employee groups don't support the legislation. But certainly in the policing community, our support for it is universal.

**Ms. Horwath:** Right, and that was the clarification: within the policing community, within the fire community. But I think we'll hear later on today that there are

some concerns from other employee groups that haven't been considered by the government.

**Mr. Miller:** That's right. Certainly.

**Ms. Horwath:** Thank you very much. I appreciate it.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** I guess in comments I've heard from the opposition party today, I was a little surprised to hear Mr. O'Toole, for instance, suggest that he would support a delay of this legislation to further study it. I would ask for your comments on that. Would you support further delay, or do you think it's time the government finally moved forward with doing something that I thought the previous government was planning on moving forward with as well, some time ago?

**Mr. Miller:** Certainly talks were first introduced in 1995. I think I am the most unfortunate person in the room, because I've been the only one at the table consistently since that time.

In any event, it was moved forward under the government of the day in 1995. It was moved forward again under Mr. Eves's government, and certainly the Premier made a clear commitment going into the election that this issue was going to be moving forward. Frankly, we have had ongoing discussions since 1995. Some of the misinformation, I think, is unfortunate, because certain stakeholder groups did not come to the table. But that was their choice.

**Mr. Duguid:** Mr. Rinaldi has a quick question, Madam Chair, if there's time.

**Mr. Rinaldi:** Just a quick question. I guess the misunderstanding, or the not being clear—including me, I must say. When we talk about the calculation of the costs—the exercise that you took when you were doing your costing using London as an example—are you comparing apples to apples with the scenarios they've used? There's a huge discrepancy. I guess I've got to get it clear, following Ms. Horwath's question. Are we costing the same things?

**Mr. Miller:** That's where I go back to—the costing formula is transparent and clear. I just invite the members of the committee to look at how these are being costed out. I think you will find that these figures are accurate and way below some of the unaffordable costs that our members wouldn't support.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you for the presentation. I appreciate the clarification of "all groups supporting it." I noticed, by the newspaper ads, that CUPE is not totally enamoured with the legislation.

I just want to go to the numbers, and I think this is so important. There is a great discrepancy between what the municipalities—the employers—and the employees are saying the cost of this plan will be. I've been putting forward that I believe that the impartial third party should be the government that is introducing the legislation. They should come forward with the accurate numbers, what they project it will cost to do this, rather than asking the committee to make the decision of one or the other.



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In your explanation, Bruce, you mentioned the fact that the municipalities are using some things in the supplementary plan that are not available. But under this bill, is it not possible for the sponsoring body, the board, to in fact include more things in the supplementary plans in the future? Some of the items that you mentioned, which you say are not there today, could be there two years after the devolution of this plan, could they not? Would that not bring forward concerns about what will happen if that can all be done through arbitration?

**Mr. Miller:** In terms of any argument, anything is possible, but it's certainly something that our group would have great concerns about because there are huge cost implications here. I think, when the Minister of Finance comes out and makes a clear statement that solvency relief is forthcoming, it's going to have a huge impact on these costs, and it's not realistic to cost these benefits without including solvency relief. Let's look at the realistic situation: We're talking about \$364 of benefits. Those are the ones that are affordable to employees and employers, not the pie-in-the-sky benefit costs that will never appear and, frankly, wouldn't be acceptable to both employees and employee groups.

**The Chair:** Thank you very much. We appreciate your being here today.

**Mr. Miller:** Thank you.

**Mr. O'Toole:** On a point of order, Madam Chair: On the question that Mr. Hardeman raised, and the discrepancy that Ms. Horwath raised as well, I would ask legislative research or someone to come up with numbers that compare AMO and the presentation we just had. At the end of the day, it's a reasonable question to ask—the parliamentary assistant is here and there are ministry staff here as well—to clarify what this shift of responsibility is going to cost.

**The Chair:** Okay. That's been recorded.

#### CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 4400

**The Chair:** Our next delegation is the Canadian Union of Public Employees, Local 4400, Toronto. Good afternoon, and welcome. Thank you for being here today. Before you begin, if you could identify yourselves and the group that you speak for. When you do begin, you'll have 15 minutes. Should you leave time at the end, we'll be able to ask questions or make comments.

**Mr. Jim McQueen:** Thank you. My name is Jim McQueen. I'm representing CUPE 4400.

**Ms. Colleen Costa:** Hi. I'm Colleen Costa. I'm also representing CUPE 4400.

**Mr. McQueen:** I'd like to thank the committee for the opportunity to speak to you today.

CUPE 4400 represents some 15,000 educational employees in the city of Toronto. It also represents the second-largest employee group enrolled in the OMERS pension plan. At the outset, we would point out that

CUPE 4400 is a member of CUPE Ontario and endorses their submission to this committee.

We would begin by congratulating the government for initiating a review of the OMERS pension plan with the intention of creating a partnership between the employer and employee groups that fund the plan. That said, we would point out that meaningful partnerships are created by thoughtful negotiations between the parties, as opposed to a legislated arrangement imposed on groups. We acknowledge that the proposed legislation is a good beginning and recommend that the government postpone passage of the act to allow the two interested parties to meet in face-to-face discussions. The purpose of these discussions would be to recommend to the government legislative changes supported by all parties which would design an appropriate model for OMERS. This would result in a pension organization best suited to the partners, providing long-term stability and guaranteeing the creation of an amended pension plan that would act in the best interests of the members of OMERS.

CUPE 4400 has significant concerns about the proposed amended legislation. Most of our concerns are administrative, which we'll itemize later in this brief. However, as an overview, we believe that the legislation as presently written is unworkable and designed to create impotency and chaos, with most power resting with an unaccountable administrative corporation. The effect of the legislation is to create a sponsors corporation made up of multiple organizations, none of which have unity of purpose and many of which may want to play out a political agenda that has nothing to do with the welfare of the participants of the pension plan.

Moreover, the decision-making process requires a two-thirds majority to make decisions on matters of importance to the welfare of the members. This requirement is unconscionable. Our political system, our social beliefs and our society create a reasonable standard of a majority vote as the means of determining approval for day-to-day decisions. Only in those cases where profound decisions are required is that standard raised. Time-to-time decisions made for the benefactors of a pension fund can hardly be defined as profound. CUPE 4400 believes that the requirement of a two-thirds majority, combined with the above-referred-to lack of unity and possible diverse political agendas, will result in a stalemate which will degenerate into bickering, with few or no decisions. While there is an arbitration system established, this process should not be the usual course for decisions. Experiences in other pension plans show that only in the most extreme cases should partners seek recourse to these provisions.

In relationship to specific concerns, CUPE 4400 believes that the composition of the sponsors corporation is too large and unwieldy. There is no necessity to have 22 individuals appointed to the corporation. This problem is compounded when the individuals come from diverse organizations driven by agendas particular to their organizations and without a commitment to the welfare of OMERS or its members. The number of members of the



sponsors corporation should be reduced to a smaller number agreed upon by the partners, with their method of selection determined by the partners.

In relationship to the administration corporation, we have similar concerns about the size of the corporation. Additionally, the powers of the administration corporation are too broad and result in the control of OMERS by the administration corporation. These powers should rest with the sponsors corporation. Administrators' powers should be just that: They should be limited to the day-to-day administration of fund and investment recommendations.

In relationship to the advisory committees: These committees are surplus and perform functions best left to the partners corporation. The existence of these committees enhances the possibility of dispute through competing groups demanding different benefits.

In relationship to voting: For the reasons outlined in this overview, the number of votes necessary to make decisions should be a simple majority. In addition, the referral of issues for mediation should occur when a sponsor requests it, as opposed to the requirement that there be a majority vote on the partners corporation before an issue is referred.

The provisions made for police and firemen only are discriminatory, especially as they relate to women, and create unequal benefits for the members of OMERS. The ability of all members of OMERS to negotiate supplemental plans should be clearly stated. Additionally, the caps specified in the bill should be removed. These issues are presently controlled by pension law. Any changes should be determined by the sponsors corporation and existing legislation.

Member organizations should vote based on the concept of representation by population in whatever the structures the sponsors corporation or participating organizations determine to be essential to meeting the goals of a true partnership.

The responsibility of the government for OMERS should not conclude with the passage of the act. The design of a pension partnership, a partners' agreement, rules and procedures governing the partners and administration corporation and the myriad of necessary procedures are complex. The government should undertake to provide the guidance, forum and mediation necessary to ensure that these complexities are properly dealt with and resolved.

In conclusion, CUPE 4400 would reiterate its compliment to the government for its attempt at changing the relationship at OMERS. We would now ask that the committee take into account the contents of this paper and follow the directions set out, which we believe would create an OMERS pension dedicated to good management, with the interests of the members paramount in its operation.

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CUPE 4400 believes that the present version of Bill 206 is badly flawed because it does not deal with the present difficulties of OMERS. In fact, the bill com-

pounds the problem through a complex structure and voting requirements which have the potential to render the OMERS pension moribund and stagnant.

I would just make one final comment, if I may, and I'm referring to the introduction; I know I've got it back to front. The underlying rationale for our presentation today is the need to establish a co-operative of employees and employers dedicated to a single purpose: proper management of OMERS to create the best possible pensions for its members.

Chair, I would ask if you would recognize Colleen briefly.

**Ms. Costa:** I'm an office administrator with the Toronto District School Board and also a 10-month, one-week employee. I also represent over 8,000 members of CUPE Local 4400, Toronto education workers. I wanted to speak to you to give you some idea of the problems our members deal with, to give some reality of the issues that you are discussing today and to underscore the complexities of pension discussions.

Many of our members are special-needs assistants, educational assistants, office admins and clerical staff, music instructors, and safety/hall monitors, to name a few. These are staff who take care of our children. Many of these employees are 10-month employees. The effect of this is that, after a 20-year career, a woman at age 65 is 20 months short of a full pension because of the nature of her employment. The imposition of an additional two years of employment to reach full pension is unfair.

Mr. Duguid is quoted in the paper today praising firemen and police for their service and bravery as they carry out their duty and indicating that they deserve consideration at the time of retirement. I endorse these comments, but I question whether a 60-year-old woman working in a special-education class, subject to struggle with an out-of-control youngster, is at any less danger and not deserving of consideration at the time of her retirement as the result of her contributions to society and the welfare of its citizens.

We wish to have a voice to negotiate pension improvements for our members. We need reasonable people to sit down and make reasonable solutions. Thank you for listening. I'm positive we can work together. This issue is too important not to take the time to get it right.

**The Chair:** Thank you. We have about a minute and a half for each party, beginning with Ms. Sandals.

**Mrs. Liz Sandals (Guelph-Wellington):** You've made some rather dramatic statements, Jim, about the composition of the sponsors corporation. You're talking about the fact that you think the current composition has members who do not have a commitment to the welfare of OMERS; essentially, by implication, that is what you're saying. I'm wondering which members you're suggesting should be removed from the current sponsors corporation.

**Mr. McQueen:** Well—by the way, how are you?

**Mrs. Sandals:** Fine, thanks. Jim and I know each other.



**Mr. McQueen:** We're not suggesting removal. What we are suggesting is that the number is too large. We believe that if the employee groups get together and the employer groups get together, they can hammer out and find the best way to find delegates that they can send, then, to the partners corporation. They also can develop the structures necessary to make OMERS function.

I would use the analogy, and I'm sure you won't be surprised, of the teachers' pension fund, where it has a limited board of directors, and their only job is to represent the groups, the teachers or the employer—in this case, the Ontario government—but at the same time to operate the funds in the best possible way.

The problem you have now, especially in the legislation, is that you have all of these groups come together. There's no suggestion or process as to how they're going to work out the transition here or the bylaws or anything else, and right at the moment, as has been evidenced by the evidence you've received, they have conflicting positions. What we would like to see is a co-operative model created whereby everybody is on the same page, attempting to do the same thing.

**Mrs. Sandals:** But surely, together, if you remove players, you are in fact going to create more issues rather than less issues, because you're going to have more people feeling disenfranchised. One of the issues that I've certainly heard about in my constituency office is the concern about non-unionized employees and their representatives.

**The Chair:** Thank you, Ms. Sandals.

You can respond to that.

**Mr. McQueen:** What we are suggesting is that, outside of the OMERS structure, these groups can come together, make their decisions and decide who they want to represent them. Those people can then have their marching orders and can go to the meetings with instructions on how they will act. I don't think anyone loses any representation by virtue of reducing the size.

**The Chair:** Mr. Ouellette.

**Mr. Ouellette:** Thank you very much for your presentation. Mr. McQueen, you mentioned during your presentation—it was very specific—that you felt there were certain discriminatory acts toward women, particularly with the fire and police. What part of the bill are you referring to specifically?

**Mr. McQueen:** It's in relationship to the supplemental plans.

**Mr. Ouellette:** So it's just as relates to the supplemental plans?

**Mr. McQueen:** That's right.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** I too want to go to the supplemental plan. First of all, I want to say, on 25 years in the fire service, that I appreciate Mr. Duguid's comments about requiring an adequate pension plan when they've served their community so well. My question really is to Mr. Duguid. If we work on the premise that they will all be negotiated, that it will be mutual agreement by employer and employee, why is a supplemental pension plan not

good for all employees? If at the end of the day the decision on supplementary plans and what type of pension we're going to have has to be supported by everybody involved, I can't understand why this bill would then not allow supplementary plans to whichever employee groups and employers felt it appropriate to negotiate one.

**The Chair:** So your question is to Mr. Duguid and not to the delegation?

**Mr. Hardeman:** Yes. The question is to the parliamentary assistant.

**Mr. McQueen:** I support his question.

**Mr. Duguid:** The simple answer is that the bill doesn't prohibit supplementary plans to be negotiated by other parties.

**The Chair:** Thank you very much for being here today. We appreciate—

**Ms. Horwath:** Madam Chair?

**The Chair:** Sorry. I forgot Ms. Horwath.

**Ms. Horwath:** I wanted to explore the same issue. It seems to me that the history of this bill—not the past history, but this bill particularly—saw many of the employee groups working together to hammer out where everybody stood in terms of what they'd like to see happening with the devolution of OMERS. I'm putting this out to you as a question, because this is how I see it in my mind. Everything was rolling around fine until the actual legislation was tabled by the government and the government decided to treat different employee groups differently in this legislation. As a result, you now have employee groups that are very much invested in this issue but, unfortunately, there is no longer any consensus at all. The issue is around the caps and around the extent to which supplemental agreements are supported by the bill. Can you comment on that in terms of the perspective that I see and whether or not you think the government did the right thing by dividing employee groups in the tabling of this bill?

**Mr. McQueen:** The simple answer is that I would concur with your description of the issue, but I also would extend it to the point that at some stage you've got to pull all of the employee groups together, all of the employer groups together, synthesize their approach and then come up with a single plan that everyone can support. I would use the Ontario teachers' pension plan as evidence of the possibility of this. So it can be accomplished. That's why we say the bill is fatally flawed, because that co-operative environment is not established.

**The Chair:** Thank you very much for being here. We appreciate your time.

**Mr. O'Toole:** I have another question of the legislative researcher or legislative counsel.

**The Chair:** Can I address this group so we can get the next group going, and then you can ask your question?

Thank you very much. We appreciate your being here today.

**Mr. McQueen:** Thank you.

**The Chair:** Mr. O'Toole.

**Mr. O'Toole:** I was looking at section 4 of the bill under "Supplemental plans." It does specify police and



fire, and I gather it also now includes ambulance. I'd ask research to determine if in fact it does discriminate—as Mr. Hardeman has suggested in his question to the parliamentary assistant—which is eminently unfair and impractical.

**The Chair:** Thank you, Mr. O'Toole.

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#### MAYORS AND REGIONAL CHAIRS OF ONTARIO

**The Chair:** The next delegation on my list is the Mayors and Regional Chairs of Ontario: Mr. Garrett. Welcome. We're glad you're here today.

**Mr. Michael Garrett:** Thank you, Madam Chair.

**The Chair:** If you could identify yourself and the group that you speak for, and when you have introduced yourself for Hansard, you will have 15 minutes. If you leave time, there will be an opportunity to ask questions.

**Mr. Garrett:** All right. Good afternoon, Madam Chair and members of the standing committee. My name is Michael Garrett. I'm the chief administrative officer for the regional municipality of York. I'm here to speak to you today on behalf of the mayors and chairs of Ontario to express our concerns about Bill 206 and to urge the committee to recommend further consultation and assessment of the full financial implications of the proposed legislation.

MARCO—the mayors and chairs group—is comprised of 15 single-tier and regional municipalities across Ontario, including the cities of Windsor, London, Hamilton, Toronto and Ottawa and the regions of Durham, Halton, Niagara, Peel and York. Our member municipalities comprise 70% of the population of Ontario. We employ over 62,000 unionized and non-union employees in a broad range of municipal services, including public health, social housing, long-term care and the construction and delivery of important infrastructure. MARCO's members are also responsible for police, fire and ambulance services. As such, MARCO represents a significant portion of OMERS stakeholders.

MARCO and its members have many concerns about Bill 206. You will hear from several of our members during these hearings on issues including governance, dispute resolution and plan design. I'm here today to speak to you about the significant cost implications of this legislation and the burden those costs will impose on municipalities and on Ontario taxpayers.

MARCO is definitely not convinced that the OMERS plan needs to be autonomous from provincial sponsorship. However, if the decision is made for OMERS to be autonomous, then the change in governance must ensure continued financial stability of the plan. This would include fair and equitable treatment of all members and the containment of costs to all stakeholders.

Bill 206 is not just about autonomy. By combining the issue of autonomy with the introduction of supplemental plans into one piece of legislation, Bill 206 threatens to

undermine the viability of the OMERS plan before devolution has even taken place.

In a letter to the heads of municipal councils in December 2005, Minister Gerretsen stated that Bill 206 would not impose any new cost or pension benefit on any employer or employee. It is his belief that municipalities have overestimated the potential cost of supplemental plans by assuming total take-up by municipalities and ignoring the fact that Bill 206 calls on local parties to negotiate supplemental plans through collective bargaining.

With all due respect to the minister, MARCO stands firmly behind the cost estimates produced by its members. These cost estimates are based on reasonable assumptions and represent an accurate assessment of the financial implications of Bill 206 for municipalities and taxpayers.

Minister Gerretsen is correct when he states that municipalities have assumed total take-up when estimating the cost implications of supplemental plans. How can we avoid such an assumption when employee organizations who have fought so hard for supplemental benefits for years clearly intend to see these benefits enjoyed by all of their members?

In a newsletter to its members in November 2005, the Police Association of Ontario stated that it “has been pushing for improved benefits for all police and civilian members for years.... We have been working with the Ontario Professional Fire Fighters Association on the issue and have been a strong, united front.”

The reality of patterned bargaining and interest arbitration in the emergency services sectors means that once supplemental benefits are introduced into any emergency service, benefits will quickly be replicated across all three emergency sectors, either through bargaining or through arbitration, with little regard for the actual cost implications on taxpayers.

Minister Gerretsen is confident that employers will be able to negotiate fair and reasonable contracts and that employees and employers will make trade-offs with other salary or benefit items through the collective bargaining process in order to introduce supplemental benefits. However, with many years of experience in collective bargaining with police, fire and ambulance, the members of MARCO do not share the minister's optimism. The associations representing these workers believe their members have earned the right to enhanced pension benefits, and they will not readily offer any trade-offs in exchange for such benefits.

While MARCO's members recognize the unique nature of the work performed by our emergency services, we also note that salary increases and benefits within these sectors have consistently exceeded those enjoyed by other public sector workers. Minister Gerretsen also believes that we have been overestimating the costs of supplemental plans by ignoring the fact that under Bill 206 local parties can only agree to include one new supplemental benefit at a time. However, these benefits would clearly be cumulative. It is therefore very realistic for employers to include the costs of all the benefits



referred to in section 10.1 of the bill when assessing the potential costs of supplemental benefits.

If supplemental plans are expressly included in legislation, as proposed in Bill 206, employers' hands will be virtually tied at the bargaining table, and legislation will no doubt influence the decisions of interest arbitrators. If the provincial government truly intends to create autonomy in OMERS and believes that the introduction of supplemental benefits should be a matter of local negotiation, it must not impose any requirements or conditions in the legislation which may hinder the ability of employers to freely negotiate future collective agreements.

Each of our members has assessed the cost implications of Bill 206 for their own municipality. In my municipality, we've used the model developed by the Municipal Finance Officers Association. If supplemental benefits were implemented for our police and ambulance services based on 2006 salaries—that's not including fire, by the way—we would see an increase in the municipal share of OMERS costs of \$11 million in one year. This would result in a property tax increase of 1.9% or \$33 for the average home in York region. Such increases would be required solely to cover the cost of enhanced pensions and would not result in any increase in police or ambulance services. The cost projection for York region is based on all of the foregoing assumptions, including total take-up and all of the benefits set out in section 10.1 of the bill. We maintain that this represents a true and accurate assessment of the total potential costs of Bill 206 if it is adopted in its present form. These costs would be imposed on municipalities already struggling with escalating labour costs in the emergency services sectors. Once again, it is the taxpayers who will pay the brunt.

We have not included any estimates of the cost of providing supplemental benefits to other groups of employees, but we believe that if such benefits are awarded to civilian employees in emergency services, we will face enormous pressure to extend them to other employee groups.

In assessing the potential costs of supplemental plans, MARCO's members, including York region, have assumed that current solvency funding requirements contained in the Pension Benefits Act will be amended, as indicated by the Minister of Finance in a recent letter to our chair. However, we have yet to see any of the proposed amendments which would be required in order to implement this change. If solvency requirements are not amended, the projected costs for my region would increase by another \$1 million.

In conclusion, MARCO and its members are significant stakeholders in the OMERS pension plan. We urge the committee to heed our dire warning about the significant cost implications of its decision to introduce supplemental plans. If the intent of Bill 206 is truly one of autonomy for OMERS, then we urge the committee to amend the bill so that its sole purpose is the achievement of autonomy. The sponsors corporation should then be given the authority to make the changes to the plan and to

engage in a full financial analysis of any changes for all stakeholders.

In 2004, the provincial government signed a memorandum of understanding with AMO in which it recognized municipalities as responsible and accountable governments, and committed to consult with municipalities prior to enacting legislation which will have a significant financial impact on them. AMO and the provincial government established technical committees—I'm on one of those—to review the impact of proposed legislation. However, Bill 206 has not been brought to our committee for discussion.

MARCO now calls on the provincial government to honour its commitment and to heed the warning of municipalities regarding the potential cost implications of Bill 206. We ask that Bill 206 be referred to technical review so that its full financial impact on the municipalities can be addressed. This is indeed a serious issue, and one that has long-term ramifications. We trust that you'll take our comments into consideration. Thank you.

**The Chair:** You've left a minute for each party, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much, Mr. Garrett, for the presentation. It was very thorough and, obviously, I would assume, accurate, based on the information that you have at the region. Again, we get different numbers from everyone who presents. It would seem appropriate to me that the government would have done some analysis so they could actually say, "This is what we're proposing, and this is how much it's going to cost."

One of the things that caught my eye here—it was from the previous presenter and now it's in yours too—was an estimate on other supplemental plans beyond the police, fire and ambulance that are presently in it. The parliamentary assistant suggested it's possible that anyone under the OMERS pension could negotiate a supplementary plan under this new structure. Was that your position, or was that what you understood, too, from this legislation?

**Mr. Garrett:** It wasn't what we understood, but I would have to defer to the experts. It certainly wasn't something that we thought was included in this legislation. The point I was making in my comments was that if this supplemental pension benefit is applied to police civilians—accountants and human resources workers who are working cheek by jowl with municipal staff—do we think that the pressure won't come for increased costs for the same supplemental benefits to apply to them? It will surely come.

1230

**The Chair:** Ms. Horwath.

**Ms. Horwath:** I had one question about your model for costing and it's two-pronged. First off, did your model include the removal of the solvency funding requirements; and second, did you model in any way take into consideration the fact that wage demands might be decreased as a result of increased demands around supplementals?



**Mr. Garrett:** The first question: The solvency funding was a separate issue and was modelled separately, and we estimated that in our case that would be \$1 million as an extra cost. So it was not included in the first figures that I gave you, the assumption being that it was going to happen even though we haven't seen the details.

With respect to planning for less wage increase in order to offset it: No, that hasn't been modelled because we don't believe it will happen.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Mr. Garrett, welcome. It's good to see you again.

One of the lines in your presentation says, "Bill 206 threatens to undermine the viability of the OMERS plan before devolution has even taken place." I've known you through the years, and I know you to be very reasonable and measured in your comments, and this one jumps out at me as being a bit of an overstatement. Do you really believe that the OMERS plan viability is threatened by the supplementary benefits, and if so, how?

**Mr. Garrett:** Municipally, I think it's fair to say that the sector is greatly concerned about the ongoing OMERS program and the costs we're going to be facing. Already this year in our budget we've had to include a close to 10% increase for the employer's share just for the basic benefits. Our concern is—the right actuarial work is so crucial—why were we giving relief for so many years in the pension plan without taking a long-term view of the pension plan? Isn't it important, before embarking on an undertaking such as these supplemental benefits, to make sure that we've got the all-in costs for the long term, that we're not making a decision today that might seem reasonable in year one but in the fully developed case is quite expensive to maintain? That's essentially what we're asking: Let's do the math carefully and understand what we're getting into, the fiscal implications of the policy decision, before it's made.

**The Chair:** Thank you, Mr. Garrett, for being here.

**Mr. Garrett:** Thank you very much.

## ONTARIO MUNICIPAL EMPLOYEES RETIREMENT SYSTEM

**The Chair:** Our next delegation is the Ontario Municipal Employees Retirement System. We are running a little late, for the other presenters who are waiting to be heard; we are about 15 minutes behind.

Good afternoon. Welcome. It's nice to see you again. We appreciate your being here. If you could identify yourselves and your organization for Hansard, and when you begin, you'll have 15 minutes. Should you leave time at the end, we'll be able to ask questions or make comments about your presentation.

**Mr. David Kingston:** I'm David Kingston, chair of the OMERS board. With me are the vice-chair, Marianne Love, and our president and CEO, Mr. Paul Haggis.

Madam Chair and members of the committee, good afternoon. Thank you for allowing us the opportunity to come before you again to speak about Bill 206. We

appreciate the time and attention the committee members have given to this bill and to OMERS's comments. We thank the committee for adopting some of the amendments proposed by OMERS at second reading. In particular, we're extremely pleased that the bill now allows the administration corporation to revise the plan text within the first 12 months of the bill taking effect. This will ensure that after the transition, the sponsors corporation and the administration corporation are working under a current and accurate plan text.

For the record, the OMERS board supports an independent governance model for the plan. OMERS is the only public sector plan in Ontario that is not governed by the employers and employees who pay for the plan. Throughout the transition and beyond, OMERS will remain secure. We are backed by over \$40 billion in assets and a professional investment team with a track record of success. We're proud of the fact that our returns in 2004 were 12.1%, and we will publish even stronger investment returns for the year 2005.

Our principal objective in considering the impact of Bill 206 is to ensure that the best possible governance model is put into place to minimize disruption during the plan's devolution process. We will be ready for the transition. We look forward to working co-operatively with the sponsors corporation.

We believe that our remaining suggestions are in the best interests of all plan members. The five amendments we are proposing serve as a solid foundation for an effective governance model:

- (1) To clarify the roles and responsibilities of the sponsors corporation and the administration corporation;
- (2) We need flexibility for future growth of the plan;
- (3) To ensure that there are start-up costs for the sponsors corporation;
- (4) Solvency requirements; and
- (5) The significant technical changes that we requested.

I'll start off with the clarity of roles.

As we've consistently stated since Bill 206 was introduced, both the sponsors corporation and the administration corporation will be essential to the future governance of this plan, but the spheres they each operate in must be very clear and distinct. Although a number of our recommended changes were adopted at second reading, the bill still does not entirely achieve this goal, and there remain some ambiguity and overlap between the two corporations.

We are concerned that some of the language used to describe the roles and responsibilities in the draft bill could result in duplication and conflict between the sponsors corp and the administration corporation, which would lead to ineffective administration of the plan. By amending the language in the bill—and we specify the relevant sections in our written submissions—the government can clarify that the sponsors corporation is responsible for plan design and setting contribution rates, whereas the administration corporation is responsible for directing and managing the investment assets and paying pensions.



Now that we've looked at clarity roles, I'll address flexibility and growth. We believe that Bill 206 should be amended so that the plan can respond to new and emerging needs in the broader public sector. Every day it seems there are new kinds of employers, such as devolved crown agencies and not-for-profit corporations. These employers and employees could benefit from access to an established, successful and affordable pension plan like OMERS.

To make this a reality, we recommend that the authority be transferred from the government to the sponsors corporation to allow that body to define and admit additional classes of Ontario-based employers related to local government or the broader public sector. Other stakeholder groups have supported this during the first round of legislative hearings. This simply allows the sponsors corporation to assume the current role that the government has in this regard. If the sponsors corporation is not given this authority, the current employer base would effectively be capped and the OMERS plan would not be able to grow to its full potential.

I've just outlined the need for flexibility and growth. Now I'd like to address start-up costs. There will be start-up costs associated with the establishment of the sponsors corporation and the development of a supplemental plan model. While the sponsors corporation has the ability to raise funds through the collection of a fee, it's likely to incur immediate costs. There are going to be legal fees, actuarial fees and administrative costs. The issue of start-up costs has not been addressed in the bill.

When the Ontario teachers' pension plan and the OPSEU pension trust devolved, the Ontario government committed the needed resources to ensure the successful transition of these plans. We suggest that the government find the appropriate means to ensure transitional funding to support the sponsors corporation as it assumes its new role.

Having looked at start-up costs, I now want to deal with solvency rules. With Bill 206, the government has an opportunity to address a long-standing concern that directly affects the affordability of pensions. OMERS is subject to generic solvency funding rules under the Pension Benefits Act. These rules are designed to protect employees from private sector bankruptcies where pension plans are not adequately funded.

However, there's a fundamental difference between private and public sector pension plans. Public sector pension plans, while not guaranteed, are funded either directly or indirectly by governments. It is difficult to imagine the circumstances where every police service, every fire service, every municipal electrical utility and every municipality went bankrupt all at the same time. We simply suggest that this will never happen.

1240

The Minister of Finance has committed to recommending an amendment to the Pension Benefits Act that would exempt any supplemental plans under Bill 206 from solvency funding rules. OMERS is pleased with this first step. However, we continue to seek a full exemption

from the funding requirement for the primary plan. We do not believe that OMERS members and employers should be burdened with possible contribution increases to fund a hypothetical deficit. I'd like to point out to you that every other Canadian province has pension legislation that exempts public sector plans from funding solvency valuations.

Having looked at the solvency rules, now let me outline the technical issues.

In our previous submission, we suggested a number of amendments that we characterized as technical issues. These are issues that, if not addressed, will interfere with the day-to-day operation of the plan.

For example, the bill currently imposes a cap on contributions that can be paid into the primary plan. The cap is fairly restrictive, and it states that the current final average earnings cannot be improved, nor can the CPP offset be reduced beyond 0.6%. OMERS recommends that this cap be removed to provide the sponsors corporation with maximum flexibility for plan design. This is a restriction that does not apply to any other public sector pension plan in Ontario.

We acknowledge that the committee has already addressed a number of the technical changes we proposed, and we ask you to consider the remaining issues. These issues are detailed in the attachments to our written submission, and in each instance we have recommended specific drafting language to address our concerns. We have also detailed what the consequences would be if the issues were not addressed.

To recap, we've presented five recommendations for amendment: clarity with the roles and responsibilities, flexibility for future growth, access to start-up costs, solvency requirements and technical issues. We believe these amendments are in the best interests of all our members and employers and will strengthen Bill 206. We look forward to the passage of an amended Bill 206, and we are committed to working with the sponsors corporation to continue to deliver a superior pension.

On behalf of OMERS, thank you, Madam Chair and committee members, for your time today. We'd be pleased to answer any questions you may have.

**The Chair:** You've left about two minutes, beginning with Ms. Horwath.

**Ms. Horwath:** Thank you for your presentation. I'm wondering about the issue you raised around adding associated employers. Have you had any discussions with anybody about that particular idea, any consultations with any other interest group or stakeholder on that issue?

**Mr. Kingston:** No, we haven't, but the whole concept behind it is flexibility within the plan, to allow the plan to grow to its full potential.

**Ms. Horwath:** I don't know if you've sat through some of the other presentations, but considering your unique position in terms of the existing OMERS plan, how is it that we get such divergent costings of the likelihood of the supplemental plans being brought forward as they sit currently in the bill? How would you describe why that's happening?



**Mr. Kingston:** How I would address that is that the sponsors came to us and asked us for the numbers, so we went to the actuaries and they gave us generic numbers for everybody in the plan. Those numbers were given back to all our stakeholder groups, and they've done as they choose with them.

**Ms. Horwath:** That's the thing about figures. Thank you.

**The Chair:** Mr. Rinaldi.

**Mr. Rinaldi:** Just a quick question. In part of your submission, one of the recommendations was to remove the solvency funding right across the board, not just for others. Do you have any idea what that would mean as far as costs?

**Mr. Kingston:** I couldn't give you the technical numbers for that, but it will affect all the pension plans in Ontario.

**The Chair:** Any other questions?

**Mr. Duguid:** I'd just thank the deputants for their input and for the contribution they have made in the past to this fund as well. We'll certainly take into consideration the suggestions they've put before us.

**Mr. Kingston:** Thank you, Mr. Duguid, and thank you, Madam Chair.

**The Chair:** We're not quite done. One more. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation.

One of the things you didn't touch on in the presentation was section 9, the change in the nature of the plan from a defined benefit plan to a defined contribution plan. After first reading, it was changed from the defined benefit plan to the defined contribution plan. If that stays that way, does it change anything for the present employees, and, looking at the two-thirds vote that would be required to make any changes to the plan by the sponsors corporation, would the two not be the same? Would there be any need to change it back to a defined benefit plan to achieve the same thing?

**Mr. Kingston:** No, sir. Under section 9, the defined benefit is entrenched in law. As this plan moves forward, that will always remain for all the plan members in existence. When we put together our submissions, we included a DC to make it flexible, to allow the sponsors corporation to move in whatever direction they chose to.

**Mr. Hardeman:** The reason I ask it is, with the other parts of the plan—the two-thirds vote and so forth—that actually does give the same protection for the plan, because it's very unlikely that you could get two-thirds support for anything that would change it away from its present structure, which is the defined benefit plan, isn't it?

**Mr. Kingston:** Really, sir, that would be a sponsors question; we won't deal with that.

**Mr. Hardeman:** But you wouldn't be supportive of changing it back?

**Mr. Kingston:** We've given our position, that we were open to flexibility, and what has come out of that we're not contesting whatsoever.

**The Chair:** Thank you very much for being here today.

## POLICE PENSIONERS ASSOCIATION OF ONTARIO

**The Chair:** Our next delegation is the Police Pensioners Association of Ontario. Is Mr. Bailey here? Good afternoon and welcome. We appreciate your being here today.

**Mr. Paul Bailey:** Thank you for the opportunity, Madam Chair.

**The Chair:** When you get yourself settled, if you could introduce the individuals at the table and whom you speak for, and when you do begin, you will have 15 minutes. Should you leave time at the end, there will be an opportunity for us to ask questions.

**Mr. Bailey:** On my right is Bruce Priestman. Bruce is a member of the Metro Toronto Police Pensioners Association. On my left is Tom Sinkovich, with the Halton police retiree group. In the audience we have Harry DeJong from the Windsor retiree group, Joan Morrison from the Peel retiree group, Dave Garlick, who is also a member of the Halton group, and Bernie Kapalka, who is with the Toronto retirees.

Thank you, Madam Chair, for the invitation to come today. We appreciate it. I'll get right into my presentation.

**The Chair:** Could you remind us whom you are speaking for?

**Mr. Bailey:** The Police Pensioners Association of Ontario.

**The Chair:** Thank you very much.

**Mr. Bailey:** Good afternoon, ladies and gentlemen. My name is Paul Bailey and I'm president of the Police Pensioners Association of Ontario. By way of background, I'm a retired police officer, having spent most of my career with York Regional Police. During my tenure with York, I was the president of the local police association for approximately 14 years. In 1999, I left York to become administrator of the Police Association of Ontario. During that time, I was also a member of the board of directors for OMERS. I retired a couple of years later and was retained to be the chief administrative officer for the Peel Regional Police Association on a one-year contract. I left there and am now in the private consulting business for benefits, and most of the major police and fire associations have been clients or are currently clients.

The Police Pensioners Association of Ontario represents approximately 5,000 retired police personnel from all areas within the province: from Ottawa to the east; Halton, Peel, York, Toronto and Durham in the south; Niagara, London, Windsor and Sarnia to the west; and Sudbury in the north. We also have individual member groups.

In many cases, our members worked over 30 years in support of public safety, to make Ontario one of the safest places to live in the world. I would also point out that many of our members continue to be active participants within their respective communities, volunteering



and working with young people and the disabled. They also continue to support the sacrifices of front-line police personnel, who continue to make the lives of all Ontario people safe. We will continue to ensure our involvement within the community is both professional and meaningful; that is our commitment. Even though our members are retired and receiving an OMERS pension, they still request the right to continue to be active participants in the overall welfare of the OMERS family. In reality, OMERS retirees represent approximately 30% of the plan. I think the actual number is 27%.

Our members attend all OMERS meetings, locally educate and assist their respective memberships on pension matters, and maintain a vigilant watch on the investment and governance issues affecting both the short- and long-term goals of OMERS. Our members have never at any time in their association with OMERS agreed to relinquish or lessen their commitment to maintaining and improving the OMERS plan.

1250

Members of the standing committee, the Police Association of Ontario supports OMERS autonomy that will be achieved through Bill 206. We believe OMERS autonomy will be good for policing, good for all stakeholders and good for the long-term growth of the plan. We are very encouraged that you have started this very long and difficult process and stand ready to assist you in any way we can to ensure that OMERS autonomy occurs.

We do, however, encourage the committee to give consideration to some of the changes within the legislation that we hope will make OMERS stronger and more resilient in regard to investment and governance issues in the future and ensure that retirees within the plan are treated in a fair and equitable manner. In this short presentation we will clearly outline our suggestions and recommendations, which we hope will help you understand our concerns and hopes for the future, and the future of OMERS. I'll get right into my presentation, Madam Chair.

Members of the standing committee, I would like to spend a brief moment on the issue of "former member." Our members recognize this issue. "Former member" has been discussed previously at other stakeholder meetings, but many of our members are still troubled with the use of this phrase. When you look at the definition of "former member" in the Pension Benefits Act, it defines a former member as "a person who has terminated employment or membership in the pension plan." We also note that in the Pension Benefits Act there is no definition of "retired member." However, the definition of "member" is "a member of the pension plan," and, in quotes, "participant." We want to make it clear that the members of the Police Pensioners Association of Ontario are proud of their long and professional careers and are equally proud to be part of the OMERS pension plan, but we feel that the phrase "former member" detracts from this. We urge the standing committee to revisit this issue and give serious consideration to include a definition of "retiree" in Bill 206. Our members respectfully require this amendment

to ensure that they are and will continue to be full and complete members of the OMERS pension plan. We would be pleased to assist you in understanding our views and implementing those changes.

I'm going to touch on the representation on the administration and the sponsors boards. In our original position paper at the commencement of the consultation process, we put forward a position regarding voting rights on both corporations. We recommended at the time an amendment to section 39 that would provide for two retired members on each corporation. One member would represent the NRA 60 members, which are the police and firefighters, and the other member would represent NRA 65 members—civilian personnel. It was our request that both these members have full voting privileges. We made this request because, in the original draft of Bill 206, a retiree could be on the sponsors corporation but would have no vote. This was a very difficult pill for our members to swallow, especially given the lifelong commitment that they had given as police personnel and the important role they played in the history of OMERS.

Committee members, the issue of voting privileges on the sponsors and admin corporations has been a very difficult and extremely sensitive issue to our 5,000 members. Frustration and anger have often resulted. On the one hand, we recognize the importance of all stakeholders having a say in the overall operation and performance of the plan. On the other hand, we recognize that if everyone who requested multiple voting rights got their wish, the plan would be cumbersome and inefficient, which in our view would lead to disaster.

We also noted that during your deliberations at committee you struggled to find some common ground with stakeholders. You made comments on December 7 that reflected the depth of your commitment. I quote:

"The rationale for the increased numbers is to better reflect the range of groups which have significant representation among the members and employer groups of the plan, and to better ensure that their representation on the sponsors group is more representative of their representation among members."

You might ask us why we feel so strongly about this. As I mentioned earlier, we represent almost 30% of the plan. We have consistently demonstrated over the years that our experience and common sense approach to pension issues has benefited all plan members. One example is the ongoing review of the investment practices in Borealis. Like many of the stakeholders, we chose to monitor the review process, not litigate the decision of the OMERS board. We communicated the facts of the process to our members. We had Mr. Haggis come to one of our meetings, and he gave us an explanation of what was going on. We continue to monitor the Borealis issue to ensure full and frank dissemination to all our stakeholders. Our group understands that in a large and complex organization like OMERS, problems will arise. We have tailored our approach in the Borealis review to achieve a more balanced and accountable explanation



that will be acceptable to our members and hopefully to the other stakeholders within the plan.

Since the inception of OMERS, our members have contributed hundreds of millions of dollars from their salaries. This enormous contribution, along with good investment practices by the OMERS board, has led, over the years, to plan enhancements. I set them out; they're fairly common knowledge. We had indexing, and we had some death benefit increases. The indexing, of course, as you know, is at 6%—the CPI. I won't spend too much time on that, given the time constraints we have, but it is in my brief.

Members, based upon the comments I have just made, the Police Pensioners Association supports your earlier decision to provide one retiree with voting privileges on the sponsors and administration corporations, and hopes you will continue this balanced approach to fairness for all the stakeholders in OMERS. We would like to affirm our position of having one NRA 60 on one corporation and one NRA 65 on the other to ensure this balanced approach.

With regard to the offset, the PPAO supports the removal of the CPP offset language currently used in Bill 206. It is our position that lowering the CPP offset should be the responsibility of the sponsors corporation. We believe that a truly autonomous OMERS will determine the CPP offset—when it's going to be reduced, what it's going to be. That will be based upon the effective governance of the plan and successful long-range investment returns.

We believe that legislation shouldn't be the criterion to make plan design changes. By enshrining the cap in legislation, you are effectively taking away any hope of pension improvements for OMERS retirees. Given that OMERS expects the number of retirees over the next 10 years to be approximately 30,000 NRA 65 and 5,000 NRA 60, this becomes an extremely important issue now and in the future. We trust you will give this serious consideration, as our members and all other retirees within OMERS wish to participate in future improvements should the plan continue its successful investment strategies.

On the advisory committee, we know you made amendments to allow the paramedics on that committee, and we applaud that effort. We would also ask you to give some consideration to having a retired member on that, getting in on the ground floor to understand what these groups are talking about. It doesn't mean we have a vote; it just means we understand what process is evolving, and we would appreciate that consideration.

Some general comments: The Police Pensioners Association of Ontario supports your position for OMERS to remain a corporate model. OMERS's success over the years has been the result of key investment strategies and effective management. Although we respect the views of some of the stakeholders who want to change OMERS into a jointly trusted plan, we feel that that would be detrimental to the ongoing continued success of OMERS. We respectfully submit that there is considerable merit in

the phrase “size matters.” As you have heard in other presentations and during your deliberations, OMERS plays a significant role in the world's largest stock markets. To change from a corporate model or split the plan into sections would, in our view, have a profoundly negative effect on investment strategies and the overall financial health of the plan. We urge you to maintain your current position and keep it a corporate model.

The PPAO also supports the position of establishing supplementary plans within the new autonomous OMERS. The PPAO and the Ontario Professional Fire Fighters Association have worked diligently over the years to enhance benefits for front-line emergency workers. We offer them our sincere appreciation for that most worthy initiative.

We also support the increase of the accrual rate from 2% to 2.33%. This is another issue that took many, many years of hard work to get into the plan.

Our last comment concerns OMERS's recommendation that section 9 of the bill be amended to indicate that the primary plan must be a defined benefit plan but allow the sponsors corporation to provide additional benefits that are not restricted to the defined benefits; in other words, defined contribution plans. The PPAO does not support this initiative. Defined contribution plans specify the contributions paid by and on behalf of each member, rather than a formula for the amount of pension. The contributions are placed to the credit of each individual and accumulated with interest or earnings. The pension is whatever amount these contributions will provide or purchase. We believe this could place our future members at risk, especially during prolonged depressions of world markets. We urge you not to approve this change.

In closing, we would like to extend our sincere thanks and appreciation to the standing committee for allowing us to appear before you today.

**The Chair:** Thank you. We have about a minute for each party to ask questions, beginning with Mr. Duguid.

**Mr. Duguid:** The last comment you made was regarding the defined contribution. Perhaps you could just elaborate a little bit more as to your concerns there. We did try to reopen that section. We went over it. We tried to reopen it at the last committee. While we haven't put forward any amendments yet, we'll be doing that when we get to clause-by-clause.

**Mr. Bailey:** Yes, Mr. Duguid. As you know and as we all know, defined benefit plans in the public sector are taking a hammering. A lot of these pension plans are underfunded. They haven't kept up in their investment processes. We think that could happen very clearly to defined contribution plans as well. They're too much at risk of short-term market fluctuations. It certainly would impact our members right now.

I guess we're being a little bit selfish in saying that 10 or 15 years down the road, as people start joining police, fire and other organizations and are switched to or offered these defined contribution plans, the appetite for quick money might be a little hard to overcome. Although



we have great confidence in support of OMERS, we don't follow their view on that particular issue.

1300

**The Chair:** Mr. O'Toole.

**Mr. O'Toole:** I appreciate your input. I have the greatest respect in most cases, if not in all cases, for retirees, being one myself, and for the fact that they actually built the plan. They created the nest egg, so to speak. I want to pay respect to that and also to the patience over years of exposure to difficulties on the job.

I'm very interested, in your response, in the change from defined benefit to defined contribution. I'm very interested in the issue of pensions, generally and broadly. I've just finished reading the OSFI report, which says there's a great movement of plans from defined benefit to defined contribution. Would you say that there should be some ability for OMERS to be flexible while at the same time finding a transition plan to those kinds of exposures? That's what this is about. Technically, if you look at most plans in the sector, almost all plans are in a deficit or the actuarial assumption is being failed. Could you just generally respond about a transition plan?

**Mr. Bailey:** Right. My concern is that, as Mr. Duguid mentioned, if defined benefit plans are failing now in the corporate world, the public sector is doing fairly well. We have our blips, and of course there are funds there to smooth those blips out and things. I just find that defined contribution has too many risks: It's too closely connected to the assumptions and interests and those other assumptions that big pension plans, like defined benefit plans, have. If OMERS or this board agrees to allow that to happen, certainly there's nothing we can do about it, but we just wanted to raise a flag to you to say that we're watching from the outside. When you see some places like IBM that all of a sudden just froze it—no advance warning. Bang; they froze their pension plan. Air Canada—

**Mr. O'Toole:** Stelco, Ford, General Motors; that's what it's all about.

**The Chair:** I'm sorry, Mr. O'Toole, you've exhausted the time.

Ms. Horwath.

**Ms. Horwath:** Thanks, Madam Chair. I'm glad you raised the issue of a defined benefit. In fact, when the government tabled the idea that they were going to get rid of the defined benefit as the underpinning of the OMERS plan, I raised that as a big red flag and was quite concerned about that. Hopefully, that will be taken off the table in the amendments that are coming in this reading of the bill.

I wanted to ask you, though, about your comments around changing your definition of "retiree" in Bill 206. I know that was raised in the first set of comments that you made to this bill. Have you heard anything from the government about their willingness to consider changing that language and having that kind of respect, more or less—

**Mr. Bailey:** In fairness to the government, we have had some communication, and if you read the deliberations and amendments to the various acts, I guess

what we're really looking for is a clarification. We want to be able to be very comfortable with our retired members to say, "Yes, you are a member. This 'former member' applies to this, but the bill clearly sets out in this section or in this part of the bill that you are full and honoured members of the OMERS family." If that came across, then, hey, we're quiet and we'll go away.

#### ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

**The Chair:** The last delegation before we have a break for lunch will be the Ontario Secondary School Teachers' Federation provincial office. Welcome. If you could identify yourself, the other individual with you and anybody else who's going to speak. When you do begin, after you've introduced yourself and the organization you speak for, you'll have 15 minutes. Hopefully, if you leave some time, we'll get a chance to ask you questions.

**Ms. Rhonda Kimberley-Young:** Thank you very much. My name is Rhonda Kimberley-Young. I am president of the Ontario Secondary School Teachers' Federation. With me is Gerald Armstrong, who is an employee of OSSTF and our pensions officer. Gerald is also the chair of the Ontario Teachers' Federation pension committee and has an extensive background with pension plans, and the teachers' pension plan in particular.

I want to say good afternoon and thank you for this opportunity. I'm sorry to be standing between you and lunch. I'm sure it's been a long morning. In fact, it is our second opportunity to present on Bill 206. Those of you who saw our first presentation may remember that it was rather lengthy, and I ran just shy of finishing it. I don't think that's going to be a problem today because, really, I think the detail and the length in our earlier presentation reflected a real optimism on the part of OSSTF about the changes that we saw coming in terms of OMERS joint governance.

We strongly believe in joint trusteeship for OMERS and believe it's long overdue. Although the legislation, in our opinion, had some areas that we believed needed to be addressed, we did see it as a strong foundation to negotiate a true pension partnership that would serve OMERS members in good stead and put the responsibility for the plan into the hands of employers and employees.

We pointed very clearly to the model of the teachers' pension plan, a successful plan by any measure in terms of performance and governance, and we believe we offered some solutions to representation challenges that we know are faced with a plan like this, which is a multi-employer plan with diverse groups of plan members. But today, I think our message will really be much simpler.

Some of the optimism that we felt is gone. The amendments that have been made to this bill do nothing to address the concerns we brought forward with the details of joint trusteeship. In fact, amendments have, we believe, absolutely undermined the concept of shared ownership and decision-making on the plan's benefits



and contributions. Employee plan members will not have an equal say in determining their pension plan with the proposed two-thirds majority vote.

I will turn to a few points in our presentation, starting on page 2. We know that our teacher members have been very well served by a jointly sponsored pension plan since the early 1990s. Amendments to section 43 of Bill 206 requiring a two-thirds majority vote to improve benefits or adjust contribution rates cannot be part of a pension partnership that equally shares risks and rewards. This form of dispute settlement mechanism will only exacerbate a sort of fractious nature among OMERS contributors and employers.

What this amendment does is tip the balance of the sponsors corporation decision-making power. It gives employers veto power. The enhanced majority requirement creates a relationship between unequals. Voting deadlocks will paralyze the sponsors corporation unless representatives from one side or the other break ranks, and ultimately the enhanced majority will prevent disputes from ever going to binding arbitration. For OSSTF, a pension partnership that lacks a fair dispute settling mechanism for our OMERS members is a real deal breaker. We are concerned about that amendment in particular.

We believe that the government can't wash its hands of OMERS governance by handing the partners a governance model that's flawed, putting in place an operating structure that we believe is not given what it needs to succeed, and by the kinds of restrictions that have been put in those amendments on the partners' decision-making power.

We believe that section 43 should be amended to provide for a simple majority voting requirement for the sponsors and administrative corporations. Both corporations should have easy access to dispute settling mechanisms, including mediation and arbitration, without a majority voting requirement.

Subsection 23(2) and section 39 should be amended to reflect the size and composition of the plan's membership. As OSSTF people often think of us as teachers, we have about 15,000 members who are OMERS members. The Ontario Professional Fire Fighters Association represents 4.75% of active OMERS members. The fire-fighters have a permanent seat on both the sponsors and administrative corporations. OSSTF represents 4.38% of the plan's members. A difference of 834 people places OSSTF in a rotation pool with 30 other unions and associations, waiting for our turn to represent our members' pension interests in the two corporations, where each group appoints a representative to each corporation and each representative serves the full three years, we'll appoint one every 45 years.

1310

We believe there is a much fairer and more democratic solution. Of the 35 unions and associations representing OMERS contributors, only 10 of them represent more than 1% of the plan's total active membership. Those representing 1% or more should have permanent seats on

the sponsors corporation. Sponsor decisions would be made on a representation-by-population basis. If CUPE, which represents 45.3% of the plan's membership, has the ability of representation by population in terms of votes, then those distinctions are dealt with in terms of representation.

Section 33 should be amended to empower each sponsor to appoint five members to the administration corporation. Employee sponsors representing more than 1% of plan members would make the appointments on a rep-by-pop basis. That selection method would ensure democratic participation and would allow both sponsors to appoint representatives with the skill and experience needed to administer a \$39-billion pension fund.

We take this responsibility very seriously. Within the teacher federations, we have an umbrella structure, we have a process for appointing directors, and we have a history of appointing people with very solid backgrounds and strong expertise.

Section 25 should be amended to codify the full scope of the partners' authority. You can see there that we have listed things we believe fall within the responsibility of the partners. That, we believe, should be spelled out very clearly in section 25. This would allow the partners to have the full scope and authority that they need to make the decisions for which they should be responsible.

Subsection 15(1) legislates a 5% contingency reserve. We believe that should be the responsibility of the partners, to determine a funding management policy to stabilize contribution rates.

Section 10 should be amended to establish parameters for supplemental plans. The partners should be responsible for developing the necessary safeguards to ensure that any liabilities incurred by supplemental benefits are allocated to the parties who negotiated the benefit improvements.

Section 12 should be amended to remove the partners' restrictions on improving benefits. At second reading, section 12 prohibits municipalities and local school boards from contributing to OMERS an amount that would result in a lifetime benefit exceeding 1.4%. The Ontario government has not restricted other public sector pension plans from negotiating lifetime accruals less than the 2% limits set by the Income Tax Act.

In conclusion, I guess we would say that we are disheartened with the two-thirds majority amendment which we have seen. We believe we have put forward some constructive advice in terms of our views of the pension plan and how it could operate very effectively as a jointly sponsored plan. We would conclude that perhaps the best end result of all this is that the government itself take over the employer side of the partnership and deal directly with the employee representatives. If the government is going to put forward what we believe is a flawed governance model, then frankly, we believe it would be better for the government to take more direct responsibility.

I know that we are going to go to questions, but I wonder if there is any way that we could be provided with some information on whether the two-thirds amend-



ment is intended to stand, as it certainly impacts other comments we might make in terms of details. Thank you.

**The Chair:** Thank you. You've left about two minutes for each party to ask a question, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation. On your last comments regarding the two-thirds vote and the government maintaining the authority over the plan, the way it's written now, and recognizing that the two-thirds vote was an amendment that the government put in the bill, I guess at this point we have to make the assumption that the intention was to leave it there.

After hearing the consultation on the first reading of the bill, is it your association's position, then, that we would be better off not devolving the authority of the plan to the corporation and leaving it with the government, as opposed to doing it this way?

**Mr. Gerald Armstrong:** I think you've made it much more complex than it needs to be. The government already has the infrastructure to manage a plan. They have all the staff they need. They have a tremendous amount of experience with the teachers' pension plan. We do not have within the teachers' pension plan a two-thirds majority or any majority necessary to go to either mediation or binding arbitration. It seems to me that what's good for teachers is good for the rest of the public service.

**Mr. Hardeman:** Thank you.

**The Chair:** Ms. Horwath.

**Ms. Horwath:** I wanted to ask if you could, from your own experience, obviously, describe for us why you think a jointly trustee model is better than a corporate model.

**Mr. Armstrong:** Again, I think we only have to look at the teachers' pension plan model, the returns that the teachers' pension plan has had in the last three years. This is a partnership that has worked. We just find no reason to go looking for another way of fixing something that works perfectly well, which is another reason to consider the government as a partner. There are 900 employers. How can any plan function, from the employers' side, with such diversity? It's a different matter from the employees' side. From the employers' side, pension plans are liabilities; from the employees' side, pension plans provide lifelong benefits. It is quite a dichotomy.

**Ms. Kimberley-Young:** If I may add, if we look at teachers as an example, the partners agreed to develop and negotiated a funding management policy, because they saw some issues on the horizon. I think they showed some foresight in developing a funding management policy that both partners agreed with and that provided a corridor over which benefits and contributions would not change.

Every pension plan faces challenges. One that is jointly sponsored puts the rewards and risks on both parties and, I think, does help establish those kinds of problem-solving efforts that are needed. In fact, we are seeing increasing liabilities in the teachers' pension plan, and we're looking at co-operative ways to address those.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Thank you again for your presentation and your assistance in this.

You indicated on page 3 of your presentation that "voting deadlocks will paralyze the sponsor corporation" and that "the enhanced majority will prevent disputes from ever going to binding arbitration." We heard earlier in the day from other groups that expressed concern that all decisions will end up going to binding arbitration, sort of the polar opposite of what you're anticipating will happen. I'm just trying to get an idea as to where you draw your expectations from and to perhaps try to determine which group is right.

**Mr. Armstrong:** Clearly, what it says in section 43 is that if a motion comes forward under "Specified change," which are increases in contributions or changes in benefits, what happens then is that you need a two-thirds majority decision by the sponsors corporation to pass that. So it fails. Now, in order to go to mediation, you need more than 50%, an enhanced majority. That means somebody has to cross the floor. This may happen in politics, but in negotiations between employers and employees, it rarely happens, so you're deadlocked.

Let's just say it was in the best interests of one group—an employer group, we'll say—to cross the floor and, "Yes, we'll allow this to go to mediation." It goes to mediation, and we'll say that the arbitrator makes a recommendation. Under these circumstances it has been our experience that this would probably happen. So now it comes again toward the sponsors corporation. Now what happens is a two-thirds majority required to pass it. No. Well, now you need more than 50% to go to binding arbitration. I think those who crossed the floor the first time would have experienced a good deal of pressure to keep on the right side of the table, and therefore it fails. That's as simple as it works. It's a veto power.

In 1990, the Peterson government offered the teachers a pension partnership that included veto power, where they had the right to veto any amendments that we suggested for benefit improvements. We said no, and we're saying no to this veto power too. It's no different.

**Mr. Duguid:** Thank you.

**The Chair:** Thank you very much for being here again. We appreciate it.

Committee, we now stand recessed until 2 o'clock this afternoon.

*The committee recessed from 1319 to 1404.*

## REGIONAL MUNICIPALITY OF HALTON

**The Chair:** Good afternoon. We're back from our recess. This is the standing committee on general government and we're called to order. We're here today to continue public hearings on the second reading version of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act.

For those in the audience who are witnesses, when you come forward if you could identify yourselves and the



groups you speak for; you'll have 15 minutes to chat with us.

Our first representative is from the regional municipality of Halton. Make yourself comfortable and identify who is going to be with you this afternoon and the group that you speak for.

**Ms. Joyce Savoline:** I will do that.

**The Chair:** After you've done all that, I'll give you 15 minutes, okay?

**Ms. Savoline:** Thank you for that.

My name is Joyce Savoline, and I am chairman of Halton region. With me here today are Tom Clark, the director of human resources at Halton region, and Bob Gray, a solicitor with Halton region who handles all our labour relations. So I've brought the big guns to answer all the tough questions.

With that, I really want to thank all of you for taking the time to go this second round of public hearings, because this is an extremely important issue to municipalities and other stakeholders in OMERS. We need to get our point across. It's extremely important to us, the OMERS stakeholders, but especially when it trickles down to the property taxpayers.

The region of Halton includes the city of Burlington and the towns of Oakville, Milton and Halton Hills. We have a combined population of over 220,000 residents. Excluding the police, we have approximately 1,400 OMERS employees, half of whom are represented by ONA, OPSEU and CUPE. We provide services in public health, including ambulance services, planning and public works and, of course, community and social services.

We know that you will listen and weigh carefully what we and other stakeholders have to say, particularly since Bill 206 will set out the OMERS plan and its stakeholders on a new and potentially irreversible course.

The associated risks are simply too great to proceed without uniform support from both employers and employee groups on fundamental features of this bill. The region does not support the bill in its current form. Fundamental features of this bill appear to have been based on inconsistent governance principles which best suit the interests of emergency service employee groups, not any other employee groups, and certainly not the interests of the general public.

The region believes and is deeply concerned that the governance structure and the dispute resolution model deviate from best governance practices without sufficient support from the groups and individuals who will be impacted by this bill. Don't get us wrong; we are not opposed to devolution or possible future changes to OMERS's plan design, but changes to the governance structure should only be made with complete and detailed input from all stakeholders and only if the changes are fully supported by the vast majority of the groups.

On the issue of governance, the second reading of Bill 206 proposes that the sponsors corporation make changes to benefits and contribution rates through a two-thirds majority vote of sponsors and members. Truly, this change from a simple majority threshold is a step in the

right direction and would bring the governance structure closer to, but still not consistent with, the unanimous decision-making models in place in most other devolved public plans. These plans include the hospitals of Ontario pension plan, the Ontario colleges of applied arts and technology pension plan and the British Columbia municipal plan.

The unanimous consent of all sponsors is vitally important to the responsible governance and safeguarding of this plan. It would mean that the parties around the sponsors corporation board table would have to work very hard at building agreement among themselves, requiring establishment of trusting relationships. A unanimous decision-making model would require a commitment to the plan's long-term viability above the interests of one particular group. Why break from the practices that have been adopted and successfully relied upon by other devolved public plans, particularly if the intention of this bill is about the best possible means of promoting good governance?

A governance model that requires a high level of consensus of sponsors is beneficial to OMERS and all OMERS stakeholders. It helps to ensure that any proposed change to benefits or contributions, whether they be positive or negative, is supported by both the employee and employer stakeholders and has rigorous protection. We believe and agree that the sponsors must have the ability to modify the plan design to ensure that OMERS remains viable and affordable for employees, employers and taxpayers.

The region, therefore, fully supports the removal from the bill of the requirement that all OMERS pension plans be defined benefit plans. This was a critically important change, and it recognizes the potential future needs of OMERS stakeholders and is one of a few changes that is consistent with the premise of autonomy. Anything less than the deletion of this provision would have posed a severe threat to the long-term sustainability of OMERS and would have demonstrated a reluctance to fully devolve the governance of the plan to the sponsors.

#### 1410

Our second concern is with respect to the dispute resolution process. Halton believes that the arbitration provisions of Bill 206, first of all, place too much power in the hands of a non-sponsor; secondly, undermine the opportunity for consensus-building amongst sponsors; and finally, significantly increase the possibility that local interest arbitrators will impose supplemental benefits through interest arbitration.

Bill 206 would grant an arbitrator the power to make significant changes to OMERS. For example, an arbitrator could establish supplemental plans, change benefits or change contribution rates. Here again, Bill 206 deviates from the norm. In most other devolved pension plans that have an arbitration provision to break a deadlock, the arbitrator is not authorized to issue an award of any kind if it increases contribution rates. Bill 206 leaves it open for an arbitrator to award changes to plan benefits and contribution rates. A more balanced and pragmatic



approach would be to limit the scope of the dispute resolution mechanism along the lines of the majority of other devolved public plans. So, changes that affect contribution rates should not be the subject of an arbitration award. These fundamental changes should be left to the sponsors to negotiate.

We previously mentioned the need for uniform consensus amongst the members of the sponsors corporation for any significant change to OMERS. The sponsors corporation, in a governance model that allows access to the arbitration, will have little reason to moderate their positions and work toward creating reasonable compromise, and will drive them to litigation rather than collective decision-making; it's just human nature. At stake at the sponsors corporation is the issue of benefit and contribution rate changes. Halton appreciates that organized labour has an interest in mimicking the collective bargaining process at the sponsors corporation, as that process has served their interests well historically. However, this legislation should stand above interests of any one group, and should enable the parties to reach decisions through the hard work of consensus-building.

What is also at stake at the sponsors corporation is the establishment of the very bylaws and rules that will guide the future of governance of OMERS. This bill will drive the parties into their respective corners for a fight at arbitration from the very outset of devolution, rather than challenging them to find common ground and direction for the sake of the plan's governance, operability and financial welfare. This is not a model for governance that Halton can support.

Of equal concern is the fact that an interest arbitrator at the local level would have no continuing responsibility to account for their award and its fiscal implications. Also, the costs of defending these arbitration requests would be significant and would have to be borne by the sponsors corporation and, ultimately, by Halton and other employers. Given the region's responsibility for the delivery of land ambulance and our financial support of the Halton Regional Police Service, we are very concerned that Bill 206 specifically directs the sponsors corporation to establish a number of supplemental plan benefits for police, fire and paramedics, including those who are employed as civilians in those places. It means that the region will soon be faced with collective bargaining requests for these prescribed supplemental benefits from our paramedics. Even if the region refuses to offer access to supplemental benefits, it would remain open for the bargaining agent to refer the issue to binding arbitration. An arbitrator appointed under our collective agreement would be hard pressed to refuse access to a benefit that has already been prescribed in legislation by the government as suitable for the land ambulance sector at large.

In addition, the new benefit may be granted by other municipalities or awarded elsewhere through a local interest arbitration. In either case, as history clearly suggests, an arbitrator confronted with such a development in the sector would be very likely to follow the

crowd, as arbitrators have often been likely to do. Therefore, with the no-strike interest arbitration provisions of the region's land ambulance collective agreement, there's a significant risk to Halton that we will have new benefits imposed upon us.

We would be remiss if we didn't identify the significant cost impacts that supplemental benefits would have on our operating budget. Based on a costing formula established by the municipal finance officers' association which in turn was derived from an OMERS report that was made to the stakeholders, the region estimates a potential 20.7% increase in costs associated with supplemental plans for our NRA 65 region of Halton employees and an estimated potential 101.5% increase in costs associated with supplemental plans for our NRA 60. That's the Halton regional police. This estimate of increased contributions represents a whopping \$5.3 million and could result in an estimated increase in the residential tax rate of over 2%.

This costing was done before we knew that the paramedics were rolled in and given access to the 2.3% actuarial rate and other mandated supplemental benefits. That would add another 0.5% to the tax base.

I want to finish by saying that OMERS should not be devolved from the government at this time, and not without the proper due diligence and broad-based support from OMERS stakeholders. Any devolution model contemplated must allow the sponsors of OMERS the unrestricted ability to determine the future of the plan, and that the establishment of or any change to a primary or supplemental benefit or any other significant change to OMERS must have the unanimous support of all the members of the sponsors corporation. Thirdly, there must not be any recourse to arbitration on fundamental changes.

These requests are not uncommon from other devolved pension plans, and I leave you with some appendices that highlight the relevant aspects of all those plans.

In summary, I ask that you give our submission careful consideration. You have only one opportunity to get such a significant piece of legislation right. When you do it now, it'll be this way for a very long time. Care and proper due diligence are warranted given the stakes that are involved. Haste will not only jeopardize the possibility to improve the flawed governance model anticipated by the bill but will also jeopardize the long-term viability of this plan. There is no pressing need here. There is no crisis to forge ahead with this bill's passage. We would strongly encourage the government to take a step backward and get Bill 206 right.

**The Chair:** You've left about three minutes in total, so each party would have one question, beginning with Ms. Horwath.

**Ms. Horwath:** One of the things that I found interesting is the assertion in your brief that indicates your expectation that, with a different type of governance model, achieving consensus would be something that is quite likely. Can you describe what kind of model you expect would be able to work in terms of consensus?



How do you juxtapose that against your support for the two-thirds majority requirement?

**Ms. Savoline:** I said the two-thirds majority was a move in the right direction, but I support the unanimous model. It's the unanimous model that puts everybody in the frame of mind that says, "We have to come out of here with a decision we can all agree upon," whereas in a two-thirds majority—it's only human nature. I've been in meetings where this has happened. There's an ability to say, "Okay, only two thirds of us need to support this in order to move forward." I'm saying that two thirds is moving in the right direction, but unanimous agreement is the model that we support.

**Ms. Horwath:** Just following in that same vein, considering the divergent groups at the table—employer and employee—how reasonable is it that you would expect consensus to be able to be obtained with any decision at all?

**The Chair:** It needs to be a really short answer.

**Ms. Savoline:** Given the right rules, I think it is achievable because people buckle down in environments like that. They know that it is incumbent on them to come up with a solution, and I think it works well.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Thank you, Madam Regional Chair, for being here to join us and for your input on this legislation. I was looking at your cost estimates for your municipality. My question to you is, what are you basing those estimates on in terms of the benefit take-up of the employees? We've heard from employee groups. Most analysts would suggest that full-out acceptance of all of these benefits by employees would be unaffordable to the employees themselves. That's highly unlikely, but are you assuming full take-up of those benefits in your cost estimates?

1420

**Ms. Savoline:** I'm going to ask our director of human services, Tom Clark, to respond, Brad.

**Mr. Tom Clark:** Yes. We thought it was only prudent to make that assumption because we are talking about long-term costs here and long-term sustainability to the taxpayers. It was only fiscally prudent to cost it based on the 2.33% accrual rate: 25 and out and 30 and out. Now, bear in mind that those costs did not include the average of the best three years or best four years, did not include our paramedics and also did not include any administration costs in the devolution of the plan. So those are lowball costs as far as we're concerned.

**The Chair:** Mr. O'Toole.

**Mr. O'Toole:** Thank you. We've heard many of the same concerns—

**The Chair:** Mr. O'Toole, could you move a little closer to the mic? I think they're having trouble hearing you.

**Mr. O'Toole:** I respect that we've heard many of those concerns, but I want to be very clear here in making sure, on the record, that your position on having the option to move toward a defined contribution plan—and they've allowed that in the more recent amendment. Do

you believe that whether they move backward on that flexibility from the sponsors or whomever is important to you in your position today?

**Mr. Clark:** Certainly, we believe it is. There are a lot of articles on the sustainability of defined benefit plans, particularly if you look at what's happening in the United States. They're a luxury now, and a lot of employers are moving to defined contribution plans. If you want to have the long-term sustainability, you have to have that flexibility.

**Mr. O'Toole:** I completely agree. I'm referring you to the OSFI annual report this year that says there's a huge move in that direction for most of the defined benefit plans. Fifty-five per cent of them are actually in deficit. The shifting and the liability are very important because there's only one payer at the end.

The other concern you had was this, which we've heard: It's the two-thirds, it's the governance model and it's the arbitration decision. Having served, as you do, in regional council—

**The Chair:** Can you wrap up your question?

**Mr. O'Toole:** The question is: What you've said—the unanimous consent, arbitration—is that another break point for you, the arbitration, the decision-making autonomy on this particular bill?

**Mr. Clark:** Yes.

**Mr. O'Toole:** Very clear. Thank you for the answers.

**The Chair:** I love concise answers. Thank you so much.

**Ms. Savoline:** You're welcome.

**Mr. O'Toole:** You just like concise questions, that's all.

**The Chair:** I do like concise questions, but I like their—

**Ms. Savoline:** Thank you for your time.

**The Chair:** Thank you for being here. We appreciate it.

## ONTARIO MUNICIPAL HUMAN RESOURCES ASSOCIATION

**The Chair:** Our next delegation is the Ontario Municipal Human Resources Association. Welcome. Thank you for being here. If you could identify yourselves and the organization you speak for. After you've done that, you'll have 15 minutes. Should you leave time, we'll be able to ask questions.

**Ms. Christine Ball:** Thank you, Madam Chair. My name is Christine Ball. I'm director, employee services, for Durham region. My colleague is Nancy Paterson, who is my counterpart at York region. I am past president of the Ontario Municipal Human Resources Association, and Nancy is the chair of our pension committee.

On behalf of OMHRA, we appreciate the opportunity to address the standing committee with regard to Bill 206. OMHRA is an association of human resource professionals working in municipalities, regions and other local government organizations throughout Ontario. We have approximately 300 individual members, representing 150 municipalities and municipal agencies.

OMHRA provides for and promotes the exchange of information as well as a sharing of applied knowledge



amongst our members. We also take a leadership role in responding to initiatives of government bodies and other organizations that will or might have an impact on our members and their respective workplaces.

While we support the principles of OMERS's autonomy, we hope that the standing committee will give serious consideration to our comments and recommendations to enable a smooth transition to the proposed governance model and to ensure that the OMERS pension plan remains stable, secure and affordable for its members and municipal employers.

With regard to supplementary benefits, Bill 206 should be restricted to dealing only with issues pertaining to governance and autonomy of the OMERS pension plan. We do not believe that the provision of enhanced benefits for one relatively small segment of the OMERS population in the form of supplemental plans should be enshrined in this bill. Governance and autonomy of the OMERS pension plan is too important and complex an issue to have it overshadowed by this ancillary focus. Given the cost impact to the taxpayer, the inequity created for other plan members and the move away from OMERS's fundamental promise of fairness for all, we strenuously advocate that the supplemental plans be dropped in their entirety from the bill.

With regard to the cost effects of the supplemental plans, in Minister Gerretsen's letter of December 20, 2005, to all heads of municipal council, he asserted that Bill 206 would not impose any new cost or pension benefit that would result in added costs for municipalities. We beg to differ. The cost to municipal governments, and subsequently their taxpayers, to provide the suggested supplemental plans is exceedingly steep.

OMERS already has a significant impact on local property taxes of over \$440 million, which translates to between 1% and 3% on average municipal budgets. Thus, the cost of supplementary plans would result in significant additional property tax levies. An analysis undertaken by the Association of Municipalities, using actuarial estimates developed by OMERS, concluded that the potential cost impact for municipalities would be as much as \$380 million per year. The amendments to Bill 206 will increase these costs dramatically, including the addition of paramedics to the list of emergency service workers for whom supplementary plans must be available.

The amended Bill 206 continues to provide recourse to binding mediation and arbitration to resolve disputes where a two-thirds majority of the sponsors corporation has not given support for a proposed benefit change. Section 28 of the bill gives the sponsors corporation the ability to pass a bylaw to require employers and members to pay a fee to fund any costs that are not related to pension administration. This would include the costs of mediation and arbitration.

Given the size and composition of the sponsors corporation, it is conceivable that the need to resort to supplementary decision-making mechanisms could occur frequently. The transfer of these expenses to the employers and members will result in additional expenses over

and above the already high pension contributions for the basic plan and the potential costs of the supplemental plans. How and when these expenses can be passed along should be more fully addressed and not be left up to the sponsors corporation, where special assessments can be levied in a sporadic or random fashion. Pension contributions are already a very significant cost to both the members of the plan and the municipal employers. Thus the assignment of ad hoc fees to pay for the job of running the pension plan is not acceptable.

Because of the huge cost impact to the taxpayer, the immense inequity created for other plan members and the move away from OMERS's fundamental promise of fairness for all, once again we strenuously advocate that the supplemental plans be dropped in their entirety from the bill. From an administrative standpoint, the logistical challenges of supplemental plans are considerable and complex. All the local supplemental plans—and they would be considerable in number when one considers the number of local collective agreements—between fire, police and paramedic unions would have to be managed and administered by OMERS on behalf of approximately 900 employer groups, not to mention the anticipated significant increase in actuarial and technology costs.

Local bargaining: We fundamentally disagree with local bargaining for pension improvements and the likelihood of a settlement through interest arbitration. Municipal employers already face escalating labour costs in the emergency services sector. The reality of pattern bargaining for police, firefighters and, more recently, emergency medical services makes the opportunity to bargain at the local level for supplemental pension benefits unrealistic. As we have seen frequently in the past, when one police or fire service is successful in bargaining a specific enhancement to the collective agreement, other services are awarded the same benefit at arbitration.

#### 1430

A case in point is retention pay, which is pay for long service, ranging from 3% to 9%. Toronto police was awarded retention pay, then Toronto fire was awarded the same benefit, and from there it became entrenched in other areas of the province through arbitration. Almost 90% of the police in Ontario now have the benefit, many due to the arbitration process and despite the fact that in many instances retention is not considered to be a local issue. This example illustrates the domino effect of pattern bargaining. There is little doubt that the proposed supplemental plans will follow the same course and be awarded by arbitrators simply because they have been achieved in other jurisdictions, with little regard given to cost and local conditions.

Another significant impact on local bargaining will be the situation where some members of a bargaining unit—for instance, emergency medical personnel in CUPE—will be eligible for supplemental plans while the remainder of the bargaining unit would not. OMERS has always enshrined the fundamental premise of fairness for all of its members; however, the proposed requirement in Bill



206 that supplemental plans be established to provide police, fire and paramedics with the opportunity to negotiate the enhanced benefits will increase inequity not only within the pension plans but within local bargaining units as well.

Currently, employers and members of the plan pay almost 10% of their wages to the basic plan. We are already managing a 9% average increase in basic plan contributions, which was introduced in 2006, and there is no doubt that there will be additional rate increases in future years if current solvency rules under the Pension Benefits Act continue to apply.

In addition to employer fiscal restraints, we must consider how much the average municipal worker can afford. On a typical wage of \$40,000 per annum, will workers be able to afford to contribute 15% of their wages to basic and supplemental plans? Not only that, but some members will contribute to a supplemental plan, only to find that the value of their pension has not been enhanced.

With regard to transition costs, significant costs will result when the province ends its sponsorship of the OMERS plan. When the province devolved the teachers' superannuation plan and the OPSEU pension trust, it committed resources to ensure the successful transition of these plans. It is prudent and just that the province provide similar financial support for OMERS devolution to ensure adequate funding to enable stakeholders to prepare for devolution and its encompassing responsibilities.

It's not sufficient for Minister Gerretsen to state that the proposed supplemental plans will be exempt from the current solvency criteria. Provincial legislators are currently amending the Pension Benefits Act of Ontario. It is vital that OMERS and other public pension funds be excluded from the stringent solvency funding rules, not only for supplemental plans, but for the fund entirely. The safeguards created by the solvency funding rules are not appropriate for public pension plans, since the possibility of bankruptcy or windup is virtually non-existent.

We fully support any submission made by OMERS and their recommendations for technical changes or amendments to Bill 206, and strongly urge the minister to ensure that the recommendations of the experts be included in the new legislation. It is imperative that there be no ambiguity within the new act and regulation and that the terms and conditions be explicit in their meaning. Following proclamation of the new legislation, we trust that the sponsors committee will be given the authority to amend the plan text as necessary.

Once again, we thank you, Madam Chairwoman, for this opportunity to address these hearings, and respectfully urge you to consider our recommendations and redraft this most important piece of legislation before proceeding further.

**The Chair:** You've left about a minute and a half for each party, beginning with Mr. Duguid.

**Mr. Duguid:** Just more of a general question. I'm trying to figure out who you represent. You represent human resource professionals?

**Ms. Ball:** Yes. We are representatives of the Ontario human resource employees within municipalities throughout the province.

**Mr. Duguid:** Are those employees represented by CUPE? Do they have union representation, or are you their collective bargaining—

**Ms. Ball:** We generally tend to be non-union.

**Mr. Duguid:** Would they be management employees?

**Ms. Ball:** Management or exempt.

**Mr. Duguid:** You say that members of the plan pay almost 10% of their wages to the basic plan. They're already managing a 9% average increase in basic plan contributions in 2006. You anticipate that there are going to be further increases as well. That plays into the argument, which I think a number of our employee representatives have put before the committee, that supplemental benefits are going to be something that will be regulated by the ability of employees to afford them. Would you agree with that?

**Ms. Ball:** I would have to see how that was written within the legislation. I would find that difficult to imagine and administer. It would have to be explained how that would be written into the legislation.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you very much. First of all, I just wanted to point out that since we've had the hearings on this bill, we've been continually stonewalled on getting the government's figures on how much the plan could cost when it's implemented. We've asked for it many, many times. We have figures from all over, but we have no figures from the government as to what they project. Now I find out why that is. The minister believes that there will be no new cost or pension benefits in this plan. Obviously, he was unable to come up with any numbers, because there's going to be no increases.

*Interjections.*

**The Chair:** Could we stop the cross-chatter, please.

**Mr. Hardeman:** One of the things I wanted to ask—and I thank you for bringing that forward, as many others have; I think it's important that the government hears that. The other thing we heard this morning in some of the presentations was the issue of the supplemental plans not applying to everyone. We were told that in fact the bill allows the new structure to provide supplemental plans for all members of the plan, so in fact we could be looking at a supplemental plan for all the CUPE workers. Have you done any analysis of what would happen to the "no cost" to this plan if everyone was allowed to have a supplemental plan?

**Ms. Nancy Paterson:** We haven't actually costed it for all of our membership, CUPE and police, but in our situation at the regional municipality of York, our land ambulance or emergency medical personnel are in the same CUPE bargaining group as the rest of our employees. We just have one large group. It just seems logical that if the emergency service personnel get these supplemental benefits, there is provision for the others to have it, although there's not a directive that they should be



established. It only makes sense that naturally they are going to want them as well. No, we haven't costed it.

**The Chair:** Ms. Horwath.

**Ms. Horwath:** You are HR specialists in your municipalities, but you're also members of this plan. Is that correct?

**Ms. Ball:** Yes.

**Ms. Horwath:** Can I ask you your position or your opinion on the switch or the move over from a defined benefit plan to a defined contribution plan, whether you think that's the appropriate way to go?

**Ms. Paterson:** It was my understanding that the defined contribution plans were only to be for the supplemental plans, that the main, basic plan would not change from a defined benefit plan to a defined contribution plan. As a vested member of the OMERS pension plan, it would certainly give me pause if that happened.

**Ms. Horwath:** So you would prefer for it to be maintained as a defined benefit plan?

**Ms. Paterson:** As a member, yes, I would.

**The Chair:** Thank you very much for being here today.

#### POLICE RETIREES OF ONTARIO INC.

**The Chair:** Our next delegation is the Police Retirees of Ontario Inc. Welcome.

**Mr. Syd Brown:** Madam Chairman, honourable members, I thank you for the opportunity to—

**The Chair:** Can I just give you the preamble?

**Mr. Brown:** Preamble? Who we are?

**The Chair:** If you would let me do my preamble, please, just as you get yourself settled. If you could introduce everybody and your organization, and after you do begin, you will have 15 minutes. Okay?

**Mr. Brown:** We are the Police Retirees of Ontario Inc. We're a non-profit corporation without share capital, and we've been so registered with the Ontario government since 1992. Our organization is administered by—

**The Chair:** Could you introduce everybody at the table first, please, and then begin?

**Mr. Brown:** Sorry. On my right is Joseph Lederman. He's the past president and co-founder of our organization. On my left is Gerry Armstrong, who is the pension officer for the Ontario Secondary School Teachers' Federation. He's here for technical support. We initially put in our brief hoping to get in front of the committee in November, but we weren't allowed to. This time we're allowed, so we sent in a similar brief. But since then, having thought about this whole process, we wonder if we're going in the right direction. So our submission today is entirely different from what we said before.

1440

Some of the background: I've been dealing with the OMERS pension board since 1961, and I don't know how many other people here have been around that long. But fortunately the government is now going to do away with compulsory retirement, so we can go on forever.

This is to the honourable members of the committee.

Having had the time and opportunity to fully review the provisions contained within government Bill 206 and the submissions presented to the standing committee by the various OMERS stakeholder representatives, our corporation has come to the conclusion, with all due respect to the government and the honourable members of the standing committee, that Bill 206 is cumbersome and unworkable and will create more problems than it is intended to resolve.

We call on the standing committee to urge the government to enter into a partnership with the OMERS plan members and to play a role identical to the one it now plays with the Ontario teachers' pension plan. This partnership would involve the government of Ontario and the members of the OMERS plan represented by their respective unions, associations and corporations.

With 900 OMERS employer stakeholder representatives and hundreds of thousands of active and retired members represented by a multitude of unions, associations and corporations all vying for positions on the corporation boards which will be created, if and when Bill 206 is enacted and implemented, there will be resentment, confusion and dissatisfaction for everyone involved.

We propose that the following steps be taken by the government:

- Enter into a partnership with the OMERS plan members.

- Both partners should appoint experts in the field of pensions and finance to administer and manage the OMERS plan, with five such pension and finance experts being appointed by each partner. The administration of this new government and OMERS members partnership should be limited to no more than 10 persons.

- Adopt, wherever possible, the administrative and management skills currently utilized by the Ontario teachers' pension plan together with the financial support available within the Ministry of Finance.

- Adopt the mechanism which will provide the partners with the ability to negotiate pension improvements. If any pension issues cannot be agreed to or resolved by the partners, those issues would be referred to a third party decision-maker.

- Such a structure, coupled with the responsibilities of the partners in the new OMERS plan, would mirror or reflect the government's current partnership with the Ontario teachers' pension plan.

- Active employee members of OMERS have no alternative but to contribute the necessary funds required to maintain pension stability. Employer members of OMERS are experiencing difficulty in honouring their financial obligations to the plan without government transfer payments or grants. You've heard from three of those municipal governments here this afternoon. Such being the case, government involvement in the plan is imperative.

- The partners should immediately begin to negotiate a partnership agreement which should reflect the partner-



ship currently in effect between the government and Ontario's teachers.

—All members of the plan, both active and retired, must share any pension surplus funds which occur from time to time in the OMERS plan.

—The act should be amended to provide for a procedure or protocol which would provide the partners with the ability and responsibility to manage future pension surplus funds so that equality for all members of the plan—employers, employees and retirees—would be paramount.

—Had the combined and united voices of the employee, employer and retiree stakeholder representatives been listened to and followed during the OMERS board consultation sessions in October and November 1998, the amount of the contribution holiday would have been decreased, and every OMERS stakeholder member would have benefited equally prior to the 9/11 tragedy and the subsequent market fluctuations, which resulted in OMERS pension surpluses being reduced from billions of dollars to a deficit position, wherein contributions must be increased beyond the level required prior to the contribution holiday's being imposed in 1999.

—The retirees represented by our corporation spent their entire working lives serving and protecting the Ontario citizens working and residing within their respective communities and jurisdictions. Our members resent the implication by the terminology "former members," as prescribed by the provisions of Bill 206. We urge the members of the committee to remove such terminology from Bill 206 and call retirees precisely what they are: retired OMERS plan members.

**The Chair:** Thank you. You've left about three minutes for each party to ask a question, beginning with Mr. O'Toole.

**Mr. O'Toole:** I just want to acknowledge that you, as retirees, really were the group that established the nest egg. You worked through conditions and local collective agreements. We see pattern bargaining now, where the stage is set here, and pretty soon down in Belleville they're asking for the same thing, which is where they're headed: to provincial negotiations. It's the same as teachers, really. That's kind of how it's done. You'd have to acknowledge that.

We've got two parts here: the policing association and the fire. This whole bill is about supplementary plans. Ultimately, that's it. They've been after it for 20 years, and the time has arrived. Do you believe in the trying to drive toward a supplementary plan?

**Mr. Brown:** I think it's necessary for emergency workers, yes, or anybody involved in emergency work.

**Mr. O'Toole:** How would that fit into devolving it, sort of, into the teachers' pension plan, which is a very well administered plan? Have you got any supplemental plans in the teachers' plan?

**Mr. Gerald Armstrong:** There are no supplemental plans.

**Mr. O'Toole:** Are there two classes of employees? We all pick hazardous professions, like ours, for instance.

Every four years we have a serious job appraisal and there's no pension.

**Mr. Brown:** That's true.

**Mr. O'Toole:** There are hazards in every occupation—actors, writers, artists—that don't have what I call lifetime employment. That's not really a question; it's a statement. I understand that.

One thing I want to be clear on is the contribution holiday deal. I fully agree with you, on the holiday, that it was a bad decision, by anyone. My position on pensions—and you're the expert from the teachers—is that there's no such thing as a surplus in any pension unless it's a partial wrap-up as decided by the Monsanto case or the complete closure of a facility and company. Would you agree with that? Actuarial assumptions are wrong on two accounts: the return on investment or equity as well as the life expectancy tables. They're wrong. CPP said it and admitted it five years ago. OSFI has reported it in their annual report. What's your position? Do you think the pensions are in good shape in Canada?

**Mr. Armstrong:** I don't know about pensions in Canada. I can only speak about the two pensions that I'm involved with: the OMERS plan and the teachers' plan. I don't want to sit here and talk about the teachers' plan, but basically what happened in that plan was that we set up a contribution corridor, which you heard Rhonda Kimberley-Young talking about earlier, where you go from 90% of full funding to 107.5%, and you don't touch the contributions if the funding results turn somewhere in between that. That is a commonsensical approach.

Under this act, what is happening is that they want a 5% contingency fund. Well, that's not a bad idea. It stops the kind of yo-yoing that you're talking about. On the other hand, why is it that the members and the municipalities are going to have to reach into their pockets and pay more when the funding drops below 100%? It should have a corridor that would allow for those fluctuations.

**The Chair:** Ms. Horwath.

**Ms. Horwath:** I'm going to ask about some general issues as well because the brief is not related specifically to the clauses of the bill. I want to ask about your position on the move to remove the defined benefit requirements of the future pension plan.

**Mr. Brown:** We're opposed to defined benefits, absolutely.

**Ms. Horwath:** You're opposed to defined contribution or—

**Mr. Brown:** Contribution.

**Ms. Horwath:** Okay. Had you been in a situation of having a defined contribution plan all these years, do you think you'd be with the secure pension that you have now?

**Mr. Brown:** No, I don't think so.

**Ms. Horwath:** Notwithstanding some of the comments made by previous speakers, I think I'm going down the same path as you. I believe that defined benefit plans are the thing that we need to protect in this country, regardless of where other plans are going in other countries. In Canada, we think we need to take care of our workers



after they retire, and I think defined benefit plans are really the only way to do that.

I wanted to ask really briefly, if I can, whether you have any suggestions or recommendations around the quagmire we seem to be in with the current bill, in regard to representation on the sponsors corporation particularly.

**Mr. Brown:** Our only position is that we don't want a position on any of those corporations or advisory committees. We believe that the members of OMERS should have the right to appoint experts to sit there. We don't need retirees sitting there. We need pension and financial experts put on those committees.

**Ms. Horwath:** So again, a trustee model, as opposed to a corporate model; is that what you're saying?

**Mr. Brown:** Yes.

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**The Chair:** Mr. Duguid.

**Mr. Duguid:** Thank you very much for your submission today and for your previous submissions. I know you've been in touch with our ministry on a number of different issues. We appreciate your input and your suggestions.

I'm trying to get an idea as to who the Police Retirees of Ontario represent. Do you have a membership right now?

**Mr. Brown:** Our membership currently is about 3,000. We've got about 6,000 more who don't pay dues, and we don't ask them for dues because they're widows or whatever.

**Mr. Duguid:** Do you work with the Police Pensioners Association of Ontario, which we heard from earlier today, or are you a separate organization?

**Mr. Brown:** No, they were started a few years after us for some reason or other because they said that we weren't representing retirees properly, so we don't work with that group at all.

**Mr. Duguid:** So you have two groups that represent retirees at this point in time. Okay. That's really it for now. Thank you.

**The Chair:** Thank you very much, gentlemen. We appreciate your being here.

#### PATRICK MARUM

**The Chair:** Our next delegation is Patrick Marum.

Welcome. Thank you for coming. After you've introduced yourself for Hansard, so we have it on the record, you'll have 15 minutes. If you leave time, there'll be an opportunity for us to ask questions.

**Mr. Patrick Marum:** Madam Chair, members of the committee, ladies and gentlemen, my name is Patrick Marum, and most people call me Pat. I am the recipient of a pension funded through OMERS, so you will understand my interest in this bill.

I believe that you're attempting to place the administration of the pension in the hands of the members. Some may say that you are handing over the asylum to the inmates, but I would not say anything like that. I will try to be more fair to the proposers of the change.

I suppose you will have figured out by now that I was not born in Ontario or even in Canada. I'm a Canadian and proud to be a Canadian by choice and not by accident of birth, so I hope you will understand why I feel strongly about the pursuit of issues that present an unfair or unjust twist that gives advantage to one side while the victim looks helplessly on.

Perhaps I should tell you that I was actually born in Ireland and I have been unable to shake this accent during the past 33 years here in Toronto. But in the years leading up to my leaving that country, I observed a pattern taking place. I should define what I see as a pattern. If something happens once, it's probably an accident. If it happens twice, it could be a coincidence. However, if it happens a third time, we're probably looking at a pattern. If it looks like a fish, smells like a fish and wiggles like a fish, there's a good chance it is a fish—that kind of stuff.

In Ireland, what we had were industries that were well established and slowly becoming unionized, factories providing the employment that helped many families step out of the shadow of the small farms that their past generations had depended on in order to survive. Largely, these manufacturers had been attracted to targeted areas by government subsidies and by tax incentives of various levels. By the way, these were name-brand industries operated by local Irish corporations. As time passed, the elasticity of economic reality began to show on the balance sheet, and these companies began to develop an exit strategy that would minimize the damage to the corporate image. Somewhere someone decided to promote a local man to the highest position possible—locally, that is—and now, with that popular local in place, the factory closed, for all the right economic reasons, of course. All this had to be explained to the shocked communities by that popular local man, who, after all, would suffer equally with the soon-to-be-displaced workers.

If we are all hurting equally, there is nobody to really blame, not even the host corporation that has bled the factory to death in the name of a better bottom line. I remember one story in the paper where the corporate talking head questioned the management of the factory and hinted that perhaps local control had been a mistake.

Had the incident I have described been isolated, I would have no business bringing it to your attention today. However, like any good con job in the criminal community, the word spreads and others quickly learn from their friends. The hardship I have described for those workers was felt in many communities throughout the country.

A con job, you are thinking—what has a con job got to do with government? Government doesn't need to deceive. It doesn't need to use sleight of hand to fool the residents. Government has all the power it needs to do as it pleases, and therefore I am out of line for making such a suggestion. You know, you could be right. But tell me, then, why Elinor Caplan, while a minister at Queen's Park, signed an order in council placing into general



revenues all the money in a trust fund that was to help communities throughout this province. Most of you will know that an order in council requires two signatures. Ms. Caplan simply concurred with her own first signature while presenting herself in another capacity. Think of all those billions of dollars grabbed from lotteries and gambling then and since then by that single move. Now, do you blame me for looking under the rocks for snakes?

I could review similar matters that show others in the same kind of light, but I want to deal with the matter before us today. Deceit and deception are not the exclusive domain of government these days. Take a look at our corporate leaders. Take a look at some of the accusations being levelled against them. Take a look at some of their past behaviour. Wasn't it A&P/Dominion that got taken over and then soon after there was a report indicating how the workers' pension was overfunded? Heck, those workers were so over-funded for their pension that the corporation should be able to take some cash from the pension fund. Don't you remember? The raider would only take that part that would never be needed by the workers. Their security was a sure thing.

Well, government stepped in and put a stop to that, and we all cheered and applauded the leaders of our day. But could it be that some little bureaucrat who was required to research the blocking of that corporate raider may have seen a way to move this scheme past the legal hurdle that foiled the raider? Could it be that someone read an old report and became inspired? Could it be that someone simply had a new thought about an old scheme to grab money they felt they had title to?

Whatever it was that provided the inspiration, funds from the OMERS pension were used to subsidize every city and municipality in the province. They were all given a 10-year holiday from making a contribution to their workers' pension, a scheme that was funded totally and completely by the OMERS pension fund.

Let's look at how it took place. A report was generated by some expert declaring that the pension was overfunded and could support a reduction which would bring it in line with the national averages or some such gobbledygook. The bottom line is that the pension fund took a serious hit, and for 10 years various levels of local government basked in a reduced pressure on their tax base. You may say that the workers got a break too for 10 years, and of course you are right, but even new members who had never paid one cent into the fund were subsidized for 10 years. But that's not the issue here today.

I believe that the report that justified the feast of financial forgiveness for the municipalities is as solid as a rock. I have that kind of faith in numbers and statistics, but then, I have a couple of shares in Enron—marvellous financial reports it had, just marvellous.

1500

Now I see that you want to grant control of my pension to the locals as well. I hope it is not a repeat of the Irish scheme coming to haunt us Canadians.

I hear what you are thinking: "What does he want? Why doesn't he shut up and tell us what he wants?"

Well, I'll tell you. I give you a way to show that everything I have said is off-line, that everything being said about this new bill of yours is true and will cause all the old pensioners whose false teeth and walkers are rattling with fear to relax: Simply guarantee that if this pension plan ever has an economic crisis, you will fund it up to the amount that was used to fund the municipalities and cities, and also add the interest that the money could have earned if it was left in its rightful place in the first place. If all the economic reports are fair and true, if no one has spoken with a forked tongue, if the future is as bright as OMERS has painted it, what have you got to lose by guaranteeing this money?

Ladies and gentlemen, please reflect on the proposal I have outlined. A lot of voters in this province depend, and more will soon depend, on the security of this pension plan in order that they and I may survive. Thank you.

**The Chair:** You've left about six minutes, two minutes per party, beginning with Ms. Horwath.

**Ms. Horwath:** I very much enjoyed your very thoughtful presentation. One of the things this bill is contemplating is in fact what some would say is the removal of the guarantee of funding of the plan, which is the solvency funding, the reason being that there's an assumption that solvency funding isn't required to the same level because these are public organizations and, theoretically, the public funds are not going to become bankrupt and unable to pay the pension obligations. Can you comment on that?

**Mr. Marum:** As long as the pensioners who have earned their way into the pension are guaranteed the pension they are given, with all the provisos and equity they have paid into it, and are looked after, how it is managed I have no argument with, and I leave that to people like Syd Brown, who did a marvellous job for me when I joined the police force back in the early 1970s. I trust that these people know what they're doing when it gets down to the detail, because that's where the devil is.

That's fine, but for the broad strokes, for items like the principle of taking the money out of the pension and now all of a sudden if you want an extra supplement on your pension, you have to pay more money for it, the extra money that was there in the first place could have assisted toward this. So there's a degree of unfairness here, and I'd like to see the playing field levelled just a little bit more.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Thank you, Mr. Marum, for taking the time to join us today. I know Mr. O'Toole enjoyed hearing your stories about Ireland and, as somebody who also has Irish heritage, I did as well.

My question to you is more based on the holiday that you talked about, the five-year holiday that municipalities had with regard to the pension. You seemed to express some concern about that. It was done under the Income Tax Act. What do you think happened to the money that was saved during that period of time?

**Mr. Marum:** That was saved by whom?

**Mr. Duguid:** Municipalities.



**Mr. Marum:** Oh, the municipalities. It just eased the pressure on their tax base. They didn't have to go to the property owners to ask for more money. Of course, that's a substantial saving for property owners because, after all, those dollars are paid in tax-paid dollars. So if you ease off that—and these are not tax-paid dollars—it's probably a little bit easier for everybody, except those who fought hard through negotiation with the cities to get the benefits that went into the fund. If there was a surplus, there's a natural expectation that the benefits would increase a little bit. But instead of the benefits increasing, of course, the money was used to ease the burden on the cities. You can argue both ways for that. I happen to think it's a little unfair.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. I share your concern with the analogy. I think it really speaks to this bill, partly on the basis that as we looked at the devolution on, I think, the first day we held hearings, we found that a number of the presenters talked about how, if you looked at the future of this plan, there would not be enough dollars to fund it. The province was, in fact, unloading this liability to the local operator, who was going to take the blame for it, which of course are the municipal employers who wouldn't be blamed for anything because they're hurting as much as the others. I think that was a very good analogy.

The other thing I would just like to ask—and obviously you're very informed about the bill—is we've also had some discussion about the defined benefit and the defined contribution plan and the switch that the government has made by taking it from a defined benefit to a defined contribution plan. Of course, that means that after the devolution, the organization would no longer be obligated to pay that which they had agreed to pay the pensioners, who no longer have any control over it. They would have to take a reduced pension because there were no longer funds to do it.

After all that, I'd just like to ask you if it had been properly done with the contributions, if it's a defined benefit plan and the holiday had been assessed properly so that it ended when they were running into the position where they required the contributions to keep the fund high enough, would that still be filling your pockets with somebody else's money? Isn't there some need to say that the money going in and the money coming out stays in balance?

**Mr. Marum:** It would be kind of nice if the money going in and the money coming out stayed in balance, but as long as you leave the money that was there in the first place where it is, then if you run out of money or you need some extra, you can go to the beneficiaries and say, "Listen, we need a few extra dollars here to make this work."

**Mr. Hardeman:** But not doing it at all, though, in fact removes the definition of the defined benefit plan. In fact, if you are guaranteed a certain pension, there is no benefit to you in having a fund growing that is beyond the pension you're going to get.

**Mr. Marum:** The teachers' fund had a similar situation to that, and for a small contribution they allowed extended benefits—a very small contribution. I haven't seen that same thing occur with OMERS. I'm referring to the beneficiary. If I die, my wife gets 60% of what I get. The teachers, for a small contribution, can get 100%. Small things like that.

**The Chair:** Thank you for being here today. We appreciate it.

**Mr. Marum:** Thank you.

## CANADIAN AUTO WORKERS

**The Chair:** Our next delegation is the Canadian Auto Workers, CAW. Welcome. Once you get yourself settled, if you could identify yourself and the group that you speak for. When you do begin, you will have 15 minutes. Should you leave time at the end, there'll be an opportunity for us to ask questions.

**Ms. Cara MacDonald:** My name is Cara MacDonald. I'm in the pension and benefits research department at the Canadian Auto Workers union, and I want to thank you for allowing us to speak on the bill again today. CAW Canada represents about 1.5% of the total OMERS membership.

I'm not going to read our submission. I just want to highlight a couple of main points. We're very concerned, of course, with Bill 206 and the revisions that were made to it. We believe that this revised bill is actually worse than the first one, and we also believe that our members are worse off under this bill than compared to the status quo arrangement.

We're dismayed to see that the 1.4% benefit cap remains in place with the revised legislation. At the same time, the revised bill seemed to address many of the concerns raised by the employers, such as the two-thirds majority vote, which as far as we're concerned is completely unacceptable to our members. Even worse, the revised legislation contemplates the placement of a management association on the employee side of the administration corporation.

Without repeating the issues we raised in the last consultation, we have some serious concerns about representation. As we mentioned in our last presentation, we do support the principle of representation by population, and for determining representation for the other employee groups, we believe that a more effective and fair method could be adopted. For instance, in order to sit on the corporations, employee groups with 1% or more of the total membership could either rotate among themselves or have all of the representatives sitting on an expanded board.

**1510**

The main concern we share with other employee and union groups is that the government is going to ram this legislation through, and that you're going to walk away and we're going to be left with an unworkable solution with no tools in place to address and resolve any differences.



So we're here today to urge you to reconsider introducing this bill, to go back to the drawing board. We'd like to see the government establish a process whereby the employee groups, the unions and the employers could be brought together so that we can negotiate and determine the structure on our own, using Bill 206 as a starting point.

**The Chair:** You've left a considerable amount of time for our groups to ask you questions, beginning with Mr. Duguid: about four minutes each.

**Mr. Duguid:** I may not need the full four minutes, but I thank you for your deputation.

I guess I'm a little surprised to hear you say that the bill hasn't been improved from your perspective, because I look at some of the measures we've taken, things like where we propose stronger language to ensure that rebound costs from the supplemental benefits will not impact other employees besides those directly impacted by the supplemental benefits. We have moved forward with amendments in the last committee session with regard to greater representation by population, which a number of groups have been calling for. You've got better representation in terms of the advisory committees. We've removed the requirement for OMERS's CEO to play a role in the mediation process, which was a concern raised by stakeholders such as yourselves. We've looked at a number of different changes that we've made to the bill to accommodate some of the requests made by groups such as yourself and CUPE and others.

So when you say it hasn't been improved—I understand your concern in terms of the cap on the benefits, and we're looking at that. We've heard a number of deputations on that. But in terms of the representation-by-population aspect, it has more or less been addressed in the committee structure. The door is still open. We're still looking at the committees and the representation. We're still looking at the size of the committees, which has been raised by a number of groups as a concern.

I'd just like to know exactly where you're coming from with some of this stuff.

**Ms. MacDonald:** Thank you for the question. Certainly, we're pleased to see that the paramedics were included for the supplementary plans. We're also pleased to see that there is stronger language on the rebound costs.

In terms of some of the other issues that we raised, we did raise the 1.4% benefit cap as an absolute dealbreaker. The two-thirds majority is new, and that's an absolute dealbreaker. And we still have some concerns about the representation.

CUPE now has representation by population. It's not quite representative of the population, but it's certainly better than the first crack at the bill. But there's also less representation now under this revised legislation for other employee groups, and adding a management association on to the employee side of the administration corporation is a deal-breaker. So it went from one or two deal-breakers to a whole handful of dealbreakers this time around.

**The Chair:** Mr. Ouellette.

**Mr. Ouellette:** On the representation, you mentioned the potential rotating membership. As opposed to that, you mentioned too—there was a rotating and a fixed number, where everybody has representation. What should the number be there? What do you feel it should be?

**Ms. MacDonald:** I think there are only 10 employee groups with representation of 1% or more of the total membership. I don't think that expanding the sponsors corporation is going to be too unruly, to have representation from all of those groups on the board. However, I understand that some people do have some concern about that, so as an alternative, as a second step in terms of what we would like to see, even a method for rotating among the groups with 1%-plus membership—so our preference is for everyone, all the employee groups with 1% plus, to be able to have representation.

**The Chair:** Mr. O'Toole.

**Mr. O'Toole:** I appreciate your presentation and I'm just repeating a few of the words here: "A majority of plan ... do not support this bill"—you're representing the CAW; I'm very familiar with them—"may be forced on...." You used the words "ram through." It's pretty harsh language. I hope Mr. Duguid is listening, because we are hearing that consistently from all the leadership. I see Hazel McCallion here. All of the municipalities, AMO, are basically—these are the employer-type groups, and the employee groups are now speaking up. See CUPE and Sid Ryan's report.

I can't understand why they're actually doing this. If there's a break point, you've said here—a deal breaker was the majority issue, as well as the governance majority issue, going into the mandatory arbitration. We've seen those decisions more frequently in police and fire, where they say, "irrespective of the municipality to pay." That's what the decision usually says. We heard that from the eastern Ontario wardens this morning. Why do you think they're doing this? Are they offloading potential liabilities into the future? If you look at the whole pension profile, public and private, they're all tanking: Ford, General Motors, Chrysler; Stelco is all about pensions. The list goes on. You should read the new report. You probably have, because you work on this full-time. The OSFI report is quite shaking. In fact, I'm old enough; I'm well over 60. Why are they doing this? I think they're shifting responsibility or future liability. They don't care if it's supplementary plans. Dalton will be saying—he promised not to raise your taxes. I think he's going to have the municipalities raise the taxes. That's what he's doing. What's your response to that?

**Ms. MacDonald:** I'm not privileged to know exactly what the thought process is behind the legislation. But, having been involved in a number of consultation processes with regard to governance and seeing this issue ongoing, I would say there is an element of truth to the argument of offloading responsibility, shifting the potential financial burden in the event of a shortfall. There's certainly some of that. But I also think that some groups have effectively lobbied the Liberal government.



**Mr. O'Toole:** Which groups would they be?

**Ms. MacDonald:** Certainly the police and the fire-fighters would like to have the supplementaries, and that's fine. We're not opposed to supplementary plans as long as they're available to all other parties.

**Mr. O'Toole:** Yes. That's discriminatory under the current framework. Ms Horwath has raised that. It's discriminatory. It's going to be allowed to a group. It's a negotiated element. Leave it as such and let them negotiate it. But these arbitrated solutions will be a charter challenge.

**The Chair:** Thank you, Mr. O'Toole. I don't think there was a question then.

Ms. Horwath.

**Ms. Horwath:** I'm not surprised by what you've raised as the issues, and certainly the other employee groups we've heard from, police and fire aside, have a lot of concerns, particularly around the inequities of the bill. It's interesting: If there's one consensus that has been reached through this process, and again, police and fire aside, I think the consensus from employee and employer groups is that this bill shouldn't go further in its current state. Certainly on the employee side, there had been a lot of groundwork done initially to make sure that the interests of the different worker groups, if you want to call them that—police, fire, CUPE, CAW, OPSEU and others—were all kind of going along in the same direction. It's unfortunate that a bill of this import to all of those stakeholders ended up dividing all the groups and causing such a rift. It's really irresponsible, in my opinion, that we've ended up in this position particularly.

I'd ask you to speak very briefly in regard to the change you saw when the two-thirds majority got added in and how you understand that. Did you understand, through the process, that we were going to end up going in that direction? How did you react when you saw that change, the two-thirds requirement?

**Ms. MacDonald:** It was my understanding that that was one of the key issues raised by the municipalities and by AMO. I was actually quite surprised to see it in the bill. We were outraged; we were absolutely infuriated. We had a meeting with the other employee groups—we call ourselves the Coalition for OMERS Pension Fairness—and all of us said that this was an absolute deal breaker and that if there had been any sort of momentum building or any basis for agreement with the legislation, with Bill 206, this revised bill just completely wiped away any possibility of consensus. We just need to scrap this and start from the drawing board, get back to basics and try to start discussing the structure again, as opposed to having it imposed on us.

1520

**Ms. Horwath:** Not dissimilarly then from others who have spoken today, that would be your advice to the government at this point. The bill has become so mired in problems now. In an attempt to amend it, it's gotten worse, so now the solution should be to get rid of the whole thing and start from scratch.

**Ms. MacDonald:** Absolutely.

**Ms. Horwath:** Do I have more time?

**The Chair:** You have lots of time; another two minutes.

**Ms. Horwath:** Great. One of the things that was a shock to me during the first clause-by-clause process was that the government put an amendment to change from a defined benefit plan to a defined contribution plan. I know you're very experienced in pension issues and very well read on the difference between those two. Can you describe to me how you felt when the defined contribution issue was raised by the government?

**Ms. MacDonald:** It's my sense that the whole issue of defined contribution is being raised in the context of the supplementary plans and that, on termination or a partial windup, the benefits could be reduced if there wasn't enough funding available in the plan. That's somewhat of a defined contribution, but not quite; it's how the multi-employer pension plans work under the Pension Benefits Act, where you can actually have a defined benefit, but in a closure or windup situation, the benefits are reduced. So in windup situations, it kind of acts as defined contribution, but if the plan is ongoing, as a defined benefit. That's how the legislation has contemplated the supplementary agreements would work. In order to ensure that there's the defined benefit, the actual benefit guarantee, on a possible windup, there definitely would need to be the solvency funding.

**Ms. Horwath:** That's the way to deal with the concern or the problem around whether or not there'd be enough funds available to ensure the benefit was there: through solvency funding.

**Ms. MacDonald:** Yes.

**Ms. Horwath:** If I could just follow up on that, because that's an issue that has come up throughout the hearings now: whether or not solvency funding is required. Can you speak to that briefly?

**Ms. MacDonald:** I don't think solvency funding is required on the basic plan, but then of course there's the concern tied to that of the devolution of power and responsibility, the shifting of burden. It is a concern, but I think that right now we could support the elimination of solvency funding on the basic plan.

**The Chair:** Thank you for being here today. We appreciate it.

## COUNTY OF GREY

**The Chair:** Our next delegation is the county of Grey. Welcome, gentlemen. As you get yourselves settled, if you could identify yourselves for Hansard and the organization or area that you speak for. When you do begin, after the introductions, you'll have 15 minutes. Should you leave any time at the end, there'll be an opportunity for us to ask questions.

**Mr. Gary Wood:** Thank you, Madam Chair. Good afternoon, ladies and gentlemen. My name is Gary Wood. I am the CAO for the county of Grey. With me today representing Grey county are Warden Bob Pringle; Councillor David Fawcett, chair of our finance and



personnel committee; and our director of human resources, Grant McLevy. On behalf of the corporation of the county of Grey, we appreciate the opportunity to present our comments on Bill 206.

The corporation of the county of Grey is an upper-tier municipality, with nine local municipalities, having a combined population of 91,000. The county of Grey and its member municipalities have in excess of 1,000 employees, and collectively we are affected by the provisions of Bill 206.

We will use our few minutes of presentation time to comment on five major issues we have with Bill 206.

The first is due diligence. Our recommendation is that the government defeat Bill 206 in its current form and undertake due diligence in order to consider the potential fiscal implications of Bill 206 to ensure that the proposed changes protect the interests of employers, employees and taxpayers. Our elected municipal representatives believe that the existing OMERS pension plan is a very good plan. The current state of OMERS is healthy, and the overall benefits provided by this plan are the result of years of fair negotiations between labour and management, with the province acting as sponsor of the plan. The outcome has been the creation of a pension plan that provides very well for the members and is the envy of the vast majority of our ratepayers.

We believe it is of the utmost importance for every member of the provincial Legislature to become well informed of the contents of this bill. We ask that no member vote to support Bill 206 without a thorough understanding of the financial implications or impact on their constituents. This understanding is important so that each member may explain why additional employee pension costs needed to be loaded on to the property tax bill without benefit to the taxpayer.

The government has committed to a dialogue with municipalities on key provincial initiatives affecting municipalities through the Association of Municipalities of Ontario. AMO has requested that the government provide its cost projections to support the government's contention that municipal cost impact estimates of this bill are too high or that they have used a worst-case scenario. In spite of this commitment for dialogue and in spite of AMO's request for the government's cost projections, we have not seen evidence that the cost impact to municipal employers has yet been considered by the government.

The Ontario Secondary School Teachers' Federation has said that it does not see OMERS governance as a matter for public or legislative debate. We disagree with that point of view. We believe that if the province withdraws as sponsor of the OMERS plan, they must outline to the public how their interest will be protected. In its current form, municipalities, and ultimately the taxpayers, will need to pay for significant cost increases through property tax.

We believe that the government is moving this bill far too fast. In its current form, it raises significant technical, public policy and economic issues, and as such it should

not be rushed through the House. Further study and changes to the bill are required. We believe that, as a minimum, a government-sponsored actuarial analysis should be undertaken to show the potential cost impact of Bill 206.

Assuming that the government defeats Bill 206, as we recommend, we would also like to provide comment on four other issues in the event that Bill 206 is brought back in a less harmful fashion. The first of these points is on the sponsors corporation. Our recommendation regarding the decision-making structure of the sponsors corporation is that the proposed structure is unnecessarily complicated and favours a mediation-arbitration approach based on a simple majority vote. The bill should indicate that decisions for specific changes be subject to the two-thirds majority vote across the board and eliminate a decision-making model that includes arbitration.

The sponsors corporation has authority to make changes to benefits or contribution rates with an affirmative vote of two thirds of its members. In the case of a proposed change that is neither accepted nor rejected, the sponsors corporation may, by an affirmative simple majority vote, refer the proposal to mediation and arbitration. Hence, this decision-making structure allows that a simple majority decision of its members may make changes that have potentially huge ongoing financial consequences to municipalities and, ultimately, local taxpayers.

The decision-making authority imposed on the sponsors corporation within Bill 206 flies in the face of autonomy. It does little to protect property taxpayers from excessive increased costs. It is clearly designed to meet the expectations of the emergency services sector to have access to an arbitration model in order to secure a number of supplemental plans that would enhance their respective retirement benefits. The creation of a sponsors corporation as well as an administration corporation to oversee and operate the OMERS pension will result in additional administrative costs for employers and, presumably, employees. The province should fund the start-up cost of the sponsors corporation, as was done for the Ontario teachers' pension plan.

#### 1530

Our third point deals with supplemental plans. Our recommendation is to remove from Bill 206 provisions allowing for supplemental plans for emergency sector workers, and that all members in OMERS, excepting retirement age 60 for police and firefighters, be treated equally. Bill 206 should only include issues regarding governance and autonomy.

Bill 206 mandates the creation of supplemental plans for employees in the police and fire sectors, and now paramedics. This combined group, although large in number, still represents a small number of the total employees who are members of OMERS. We are concerned with the future costs associated with providing supplemental plans for this select group. This privileged group has now been expanded to include civilian police employees and eliminates the traditional police and fire-



fighters group previously used in establishing OMERS pension entitlement.

We are also greatly concerned with the prospect of now having to provide identical benefits to all employee members of OMERS. As recently as yesterday, we were asked by one of our six labour unions when these benefits would be on the table for them as well.

We have considered the financial impact the current provisions of Bill 206 would have on the county of Grey. At a minimum, the cost impact for paramedics alone would be \$400,000 annually. Extending similar benefits to all county employees would increase our costs in excess of \$1.1 million annually and represent a property tax increase of 1% to 4%. These are estimates only. To be more precise, an actuarial analysis of our employee group would need to be done. We believe the government should have done this before now for the entire members' plan.

Whatever the cost, these dollars could be used to provide enhanced protection for persons and properties or to rebuild roads for our ratepayers. Instead, these dollars will be directed toward increased pension benefits and reduced protection as emergency workers, through these new supplemental plans, are encouraged to retire earlier.

The question we ask on behalf of our taxpayers is, why did this government see it necessary to add this expense to municipal property tax while providing absolutely no improvement in municipal services or benefit to property taxpayers? As a municipal employer, we do not support the notion that the current OMERS pension plan creates issues in retention of our staff, nor do we have difficulty attracting new employees in the emergency services sector as a result of the OMERS pension being viewed as inadequate.

Initial OMERS devolution discussions were focused on improving efficiencies in board decision-making and streamlining board appointments, yet Bill 206 shifts the focus to one of enhancing retirement benefits for a select OMERS employee group. We ask the standing committee to consider the financial implications of this shift away from the initial focus on autonomy and devolution. We believe that, through the provisions outlined in Bill 206, the province is ignoring the best interests of communities, small business groups, seniors and property taxpayers in general.

Our fourth item is defined benefit or defined contribution. Our recommendation is for Bill 206 to maintain the flexibility to provide benefits funded on either a defined benefit or a defined contribution, as decided by the sponsors corporation. We support the government's removal of section 9 of Bill 206, which necessitates that all benefit plans be defined benefit plans. If the intent of devolution is to permit the members of the sponsors corporation to take more responsibility for their plan and the financial consequences for their decisions, we agree that they should have the flexibility to make their own decisions on this matter. Employers are under significant financial pressure today in maintaining employee bene-

fits when the benefit is defined, as opposed to the employer making a contribution toward the overall cost.

Our fifth and final point has to do with solvency funding and supplemental plans. There's nothing in Bill 206 that changes the solvency requirements for OMERS supplemental plans, and it would be irresponsible to adopt a reduced cost estimate to administer such plans based on a potential solvency exemption. With the governments' current amendments to Bill 206, projected municipal cost estimates will actually increase, not decrease, resulting in property tax increases without any additional benefit to the property taxpayers in our county.

We welcome questions members of the standing committee may have for us, and we thank you for receiving and listening to our presentation.

**The Chair:** We have slightly over a minute for each party, beginning with Mr. O'Toole.

**Mr. O'Toole:** Thank you very much. We had a very similar presentation this morning. The very first presentation was from Grey-Bruce, and had a similar interpretation. We are hearing many of the same comments by the municipal leadership, both elected and civil servants, as I would call them.

You seem to be a very sophisticated person—not to be artificial—and I'm sure you're involved in negotiations, and payroll and benefits are about 80% of your budget anyway. Have you looked at working with the agreements? There are supplemental plans in some parts of Ontario today for emergency workers.

My question is this: There's nothing preventing, in negotiations—

**The Chair:** Mr. O'Toole, could you ask a shorter question? We're never going to get to the answer—

**Mr. O'Toole:** Well, okay. Yes, I will. Thanks very much, Chair.

**The Chair:** And speak right into the microphone, please.

**Mr. O'Toole:** I would have asked it by now.

**The Chair:** No, I don't think so.

**Mr. O'Toole:** The provincial police, fire and ambulance associations establishing a supplementary plan without Bill 206: Do you think that's possible? A group RSP—this would be a group plan as a supplementary retirement benefit.

**Mr. Wood:** Outside of OMERS, quite possibly; no doubt about that.

**Mr. O'Toole:** I'm sure they can; absolutely. I wonder why they don't do it.

**Mr. Wood:** Well, I can tell you what happens when they do it. When they do it, then everyone says, "Me too," and that's not acceptable.

**The Chair:** Ms. Horwath.

**Ms. Horwath:** I just wanted to ask about your assertions around asking the government to maintain the removal of the requirement for defined benefit plans. You talked about the flexibility that this will allow. Can you expand on that flexibility, please?

**Mr. Wood:** The entire intent of the devolution was to try to get the government out of the awkward position it's



in and to try to put the control back into the parties that are in fact negotiating the plan all the time, and that's the employers and the employees. We're suggesting that the decision for that be placed back into their hands and not be mandated by the government. We see no reason for that to be mandated by the government; that's what negotiations are all about.

**Ms. Horwath:** You say that referring to the entire plan, not just supplementals.

**Mr. Wood:** This bill only deals with supplementals, as far as I know. The basic plan is defined, and I'm not sure that can be undone at this point. But certainly I would see that the entire plan and the supplementals should be a decision that the parties involved with the negotiations make, not one that is mandated by government.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Thank you for being here today and joining us to make the presentation that you've made. My question is around your cost estimates. We've had testimony here today and in previous committee hearings that has indicated that any suggestion that all the benefits will be taken up fully is totally unrealistic given the cost to employees themselves, that even the employees wouldn't be in a position to be able to take up all of the benefits fully. It looks like your cost estimates—I'm just glancing at them; I haven't seen them. Could you tell me if they are inclusive of a full take-up of the benefits? Is that what you're estimating as a worst-case scenario?

**Mr. Wood:** The \$400,000, the minimum for EMS, no. That's a figure based with their moving to the suggested new group and benefiting with the earlier retirement and also the additional accrued service at 2.33%, I believe.

**Mr. Duguid:** So it's a full take-up of all of the benefits.

**Mr. Wood:** No, there are many other things that were possible to negotiate; I think there are up to nine different ones. So when we talk about the minimum, no. We're looking at our basic minimum. But we still include in our costing the solvency funding because that hasn't been eliminated. But even if it were, each of these groups differ from municipality to municipality. It depends on their age and many factors. We are asking you as the government to undertake an actuarial study so that this question will not be argued back and forth between you and me, but in fact will be definitively answered through that study.

**The Chair:** Thank you and your delegation for being here. We appreciate it.

1540

#### CITY OF MISSISSAUGA

**The Chair:** Our next delegation is the city of Mississauga. Welcome. Once you get yourself settled, if you could introduce the people with you and the city that you represent so Hansard has a record of it. After you've done your introductions, you'll have 15 minutes. If you leave time, there will be an opportunity to ask you questions.

**Ms. Hazel McCallion:** Thank you very much. I'd like to introduce our city manager, Janice Baker, and Eric Draycott, our human resources commissioner.

I'm not sure I'm pleased to be here today. I thought maybe the last time we were here we might have done some good, but when I read the changes that were made, it went from bad from worse, so it forced me to come back because of the grave concern.

We don't support many of the amendments that were made by the standing committee. We don't really believe the standing committee listened to the municipalities, AMO etc. You will know that there is a consistency in the submissions made by the municipalities. It's the tax increase that's going to occur, and the downloading that the public doesn't even know about. It's very difficult for us to get our message across to the public that this is a downloading. I would think that it will make the downloading of the previous government look like chicken feed when this is put in. To think that it's going to stop at fire, police and paramedics is a joke, quite honestly. It will spread.

I think CUPE has already made—by the way, I want to thank CUPE for the ad. I've had more requests from the public now, since CUPE put the ad in the newspapers, so I want to thank them; not that I agree with their entire presentation, because we strongly support the two-thirds vote. I just can imagine sitting around the table and deciding on the supplemental plan and somebody is home ill that day. A simple majority: That would be easy. Or arrange for somebody to be home ill. That has not been unusual in some decision-making situations. So the two-thirds vote, in my opinion, is absolutely essential.

Arbitration doesn't work. It hasn't worked for the municipalities for years. The Large Urban Mayors' Caucus right now is asking the minister to come before us to discuss arbitration. It doesn't take into account the financial capability of the municipality to pay or take into account the financial capability of the taxpayers to pay, and could have a major impact on seniors, etc., who are struggling now to keep their heads above water.

I'm not going to read our presentation because, quite honestly, it repeats a lot that's been said to you by different groups and by AMO. I just say to you that this bill has got to go back.

I notice that questions have been raised on our estimates of cost. I would love to have the provincial government's estimates of cost. I really would like to see them, to have an opportunity to comment on them. They're challenging ours, and that's right; that's okay. But I would like to challenge their estimates. I can assure you that I've been told—I don't know how accurate it is—that if the OPP and OPSEU ask for it, which will be a natural, the cost to the province for the OPP would be something like \$77 million.

I don't believe the province has done its homework. That's my position, very clearly. The public is not in the picture on this at all. This government promised not to increase taxes. I think they will increase their own taxes,



if it goes to the OPP and OPSEU. But I'll tell you that they're going to increase our taxes. In my opinion, that's a tax increase, no doubt about it.

Therefore, I say to the government, please go back and do your homework. The bill is flawed, and the standing committee hasn't made it any better.

There's going to be a major cost to the stakeholders in setting up the situation that they have recommended. I hope the province is going to fund that cost of the set-up.

Members of the committee, please, have you done your homework on the cost, the impact? If you have, would you share it with us? We would love to have it in order to comment on it. So I ask you, I plead with you today, to go back to square one, and I speak not only for the city of Mississauga; I want you to know I speak for the Large Urban Mayors' Caucus of Ontario. We dealt with it at our last meeting, and, as chairman of that group, I can assure you that they are greatly concerned with the financial impact.

We're struggling now with property tax increases in this province. Our taxes are going up 5.9% in the city of Mississauga, and the people are not happy with it, I can assure you. This downloading, which it really is, will just make that situation worse. It means that we'll have to cut out services to our people. It's as simple as that, because you can only tax so much. I believe the taxpayers of Canada are overtaxed, and the property tax, the most regressive tax, has nothing to do with the income of people, the ability to pay, but is based on assessment of their property. It's not a growth tax. It's not based on the growth of the economy, like income tax, sales tax, etc. I would ask the government to take this into account.

If you are opposed to a tax increase, then we will have to demonstrate this and portray this to the public as a major tax increase in the province on the municipalities. So I would ask the committee to please scrap the bill the way it is and go back and get more input on it. I think you have the input from the many presentations that were made at the first hearing. You've heard them today. There's not even agreement—it's true that among the groups that are presenting, like CUPE and the municipalities, they're all saying the same thing: It's flawed; it needs major surgery. Therefore, I plead with you, as a government and members around the table who represent the government, to do your homework. Give us the impact that you think is going to be on us. We have not seen any figures as to the impact. We've tried to estimate. As the press just asked me, what is the impact in regard to police, fire and paramedics? We can estimate that. We have no idea if it spreads to all our unions. The homework has not been done. I plead with you that we go back to square one and get the homework done.

Also, I would ask the government to explain the whole process to the citizens of Ontario. I think communication with the citizens is extremely important. I think the province has a responsibility to communicate with the citizens of Ontario on this. Until CUPE ads appeared, in my opinion, the public was in the dark.

Thank you, Madam Chair.

**The Chair:** Thank you. You've given everybody about two minutes to ask questions, beginning with Ms. Horwath.

**Ms. Horwath:** Welcome. I think it's kind of funny. You were talking about the fact that this bill needs major surgery. From the sounds of many of the stakeholders today, it needs to be euthanized. I think you would agree with that.

I wanted to ask you a little bit about your cost estimates because, again, everybody's frustrated with the lack of government numbers in regard to costing. We heard from the Police Association of Ontario today, and their cost estimates, based on the same figures that were provided to municipalities from the OMERS board, came out far different and, of course, far less than the ones that you're putting forward.

So I have two questions. How would you explain that divergence in figures, and also, what's the time frame over which your model, your analysis of final figures, is looked at? Are you assuming that with the figures you're providing, immediately all benefits possible under the supplementary plans will be provided, and that's where they come from? Could you describe that, please?

1550

**Ms. McCallion:** I'll ask our CAO to deal with that.

**Ms. Janice Baker:** First of all, I haven't seen the police association numbers, so it's a bit difficult for me to speak to them, but I understand that they were prepared without the solvency assumptions in them, which I think makes a huge difference. We did it on the basis of what the legislation provides for. We used models that were provided to us by OMERS, and we took a couple of examples. For instance, in the first submission we made to the standing committee, we gave you the example of just one of those benefits, which would be the enhancement to a 2.33% supplemental benefit plan, and for our firefighters group alone—because police is regional, as you know, in Mississauga. We haven't bundled anything together, and we haven't tried to overstate the case. We've said that if you look at that one benefit alone, based on the way the legislation was written at the time and the models that we were given by OMERS, it's \$1 million. To put that in context, in Mississauga, that's a half per cent tax increase just to pay for an enhanced benefit that buys our citizens no additional service.

**Ms. McCallion:** The region will be glad to give it to you on the police and paramedics, which will be much larger.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Your Worship, thank you again for joining us today and for your input. We have received correspondence from you on this matter, and we appreciate that as well.

I guess your main concern is the costs. From what I've seen of the estimates put together so far by municipalities, there's an assumption that there's going to be full take-up of all the benefits. That assumption has been refuted time and time again, here at committee today and in previous meetings as well. There's a certain capacity that employees themselves cannot afford to go over in



terms of their own contributions. Their contributions are increasing already. When you look at the future of the fund, there's anticipation, according to some of the deputations we've heard, that they're going to continue to increase. The feeling is that it's unrealistic to think that there will be full take-up of these benefits, and even if there is some take-up of them, there will be solvency relief. Those are all things that will have to be negotiated with the various municipalities and their stakeholders.

I understand your concerns, and you've raised them a number of times with us, but I guess my question to you is, do you recognize the steps that we've taken in terms of solvency relief to try to reduce any potential costs that may exist?

**Ms. McCallion:** What have you done to estimate the costs, whether it's full or part? I'd like to see some figures come from the government. You have the staff, you have the capability to do it, so why don't you come up with some figures instead of challenging ours?

**Mr. Duguid:** The figures that have been—

**Ms. McCallion:** You talk about, "Have you calculated this and have you calculated that?" I could come back and ask, "What have you calculated?" If you are so assured that what you're doing is right, then you should have done some calculations to know that if we came up with a calculation, you could say, "Sorry, Madam Mayor, your calculation is wrong," for this and this reason. We don't have that. You haven't come up with any figures that I know of.

**Mr. Duguid:** The difficulty is, though, that it's impossible to entirely predict whether municipalities will in fact bargain for these particular—

**Ms. McCallion:** Predict the worst.

**Mr. Duguid:** The numbers that we've seen are worst-case scenarios.

**The Chair:** Mr. Duguid, you've exhausted your time.

**Ms. McCallion:** I'll tell you, the worst will occur.

**Mr. Duguid:** We've been told that the worst is totally unrealistic and unlikely to occur.

**The Chair:** Thank you, Mr. Duguid. You've exhausted your time. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much, Madam Mayor, for your presentation. I want to say that I was most impressed with your first request, that the government come up with some numbers. We've been asking them over and over again. If we disagree with the municipalities' numbers and we disagree with the employees' numbers, there must have been something in there when the government proposed the bill that would put some cost—even if they can't do the whole thing, worst-case scenario, how much does it cost to change one part of the plan in the individual municipalities, so we can find the problem?

We just found out this morning why they haven't done it. I'm sure, Madam Mayor, you got the letter. On December 20, the minister wrote to the municipalities about your concern about the cost, and said that Bill 206 would not impose any new cost or pension benefits that would result in added costs to municipalities. So the

minister has decided that this bill will not cost anyone anything. That's why they don't have any numbers: They didn't have to go any further than that.

I was just thinking of that as you made your presentation. I remember hearing you speak at the mic at the AMO conference quite a number of years ago when it was a different government, and you were also concerned about a bill. You mentioned, as you did today, that radical surgery was required. At that time, you told us that radical surgery was likely impossible; it was time for a funeral. I gather that's what you're suggesting with this bill.

**Ms. McCallion:** Well, I wouldn't mind a funeral for this bill.

**Mr. Hardeman:** The other thing that's also very important—

**The Chair:** Mr. Hardeman, are you getting to a question? You have about 30 seconds.

**Mr. Hardeman:** Yes. The other thing that's very important to mention, and you mentioned it in your presentation, Madam Mayor, is the fact that we have almost everyone having great concerns about this bill, even though it may be on totally different aspects of the bill. I would agree with you. Thank you for your presentation, because I agree that much more work needs to be done before any bill gets into the Legislature that has this big an impact on our population.

**Ms. McCallion:** Well, we're going into negotiations with our firefighters. They've already got it on the table.

I say to you, do your homework. I don't mind you challenging our figures and saying, "You know, you looked at the full case, etc." The point is, what did you do to provide us with the information for us to challenge? It's a two-way street, not a one-way street. I don't mind our figures being challenged. You have that right. But at least provide us with something that we can also challenge. That has not been done. And by the way, I'd be glad to attend the funeral.

**The Chair:** Thank you, Madam Mayor.

**Ms. McCallion:** Thank you.

## CANADIAN UNION OF PUBLIC EMPLOYEES

**The Chair:** Our next delegation is the Canadian Union of Public Employees, CUPE Ontario. Welcome and thank you for coming today. If you could introduce yourself and the organization you speak for for Hansard. After you have introduced yourself, you'll have 15 minutes. Should you leave time at the end, there will be an opportunity for us to ask questions.

**Mr. Sid Ryan:** My name is Sid Ryan. I'm the president of CUPE Ontario. To my left is Judy Wilkins, our legislative liaison. Brian O'Keefe, to my right, is the secretary-treasurer of CUPE Ontario, and Frank Ventresca, from the Niagara area, is the chair of our school board workers' committee.

Let me begin my remarks by saying that I guess it's only the Liberals in Ontario who could put Hazel McCallion



and Sid Ryan on the same page when it comes to the radical surgery that's required with this legislation. Clearly, you've strayed far away from the indications that at least the Premier gave to me when he first got elected, that he wanted to get both parties to sit down and negotiate what a pension plan governance model would look like.

We requested of this government to do one thing and one thing only: Provide us with a table with the employers of this province who are members of this plan and the employee groups. That's all we asked. We didn't ask you to come in with your own prescription; we didn't ask you to sign a sweetheart deal with the police and the firefighters of this province. We asked for a fair and open process, and we wanted the government to participate in a way that would bring the two sides together. That's all we asked.

Instead, we got this Bill 206, which essentially is a bill that was rejected by all the stakeholders, that came from the OMERS organization. Those same individuals that FSCO, the Financial Services Commission of Ontario, are investigating—they come forward with their own plan, and you accept it holus-bolus and then you try to stick it to the rest of us in the province.

Consequently, you now have a mess on your hands, and you have to try to somehow get yourselves out of this mess created by political expediency, signing a document with police and firefighters before an election to curry favour with those two organizations when they represent only 15% of the plan members at the expense of 85% of the plan members, most of whom are women, most of whom earn less than \$30,000 a year. So I hope you're proud of the work that you've done in terms of sticking it to the women of this province and sticking it to low-paid workers so that you can curry favour with police and firefighters, who already have a gold-plated pension plan. You want to turn it into a platinum-plated pension plan at the expense of the majority of the plan members. I can assure you we had a meeting with 450 of our leaders from across this province only a few hours back, and we have taken a strike mandate from those 450 leaders. On February 10, we're going to be announcing a province-wide strike, where we'll have 120,000 men and women from all the trades, all the jobs and all the different occupations in the school boards and in municipalities. I'll be asking the Ontario Federation of Labour to help us organize even broader, beyond the 120,000 members of CUPE, because we will not stand by. I didn't allow Mike Harris to stick it to low-paid workers, and I certainly will not allow Dalton McGuinty to stick it to these low-paid workers either. You need to understand that.

**1600**

You've got an opportunity here to go back and do what we asked you to do in the very beginning: Scrap this legislation, go back to the drawing board and allow the parties to sit down and do what we do for a living; in other words, negotiate what a planned governance model will look like. We've got lots of experience and lots of examples of where this has been done in the past, with

Liberals actually working with schoolteachers to make it happen and the Conservatives working with the OPSEU organization to make it happen. Pension plans all across this country have allowed the stakeholders to sit down without interference from the government to basically make sure that we come up with a governance model we can all agree on.

Briefly, as we go to our brief today: The recommendations made in the original submission have not changed. However, you've made 46 changes in lightning speed, trying to sneak this through by stealth, and I tell you it won't work; ramming this through the House is not going to work. Following the clause-by-clause debates and the second reading of the bill in December, we made a decision to focus on a number of core issues and to re-evaluate our overall decision on the bill in light of disturbing government amendments introduced at second reading, including a supermajority voting requirement on the sponsors corporation. Under Bill 206, some 40 trustees and directors will have a say in what OMERS does and how it gets governed. They will split into two boards. This means that on crucial issues the boards will be tied up in knots and unable to make effective decisions about anything.

OMERS is currently under investigation by the Financial Services Commission of Ontario with respect to its decisions to outsource the management of investments to outside entities heavily influenced by former employees, and then to repatriate the same investments a few years later at an undisclosed total cost of tens of millions of dollars. Bill 206 will do nothing to alleviate the weaknesses underlying this crisis. Indeed, by increasing the size of the board and failing to provide for any effective checks and balances, Bill 206 will entrench and deepen OMERS's existing weaknesses.

We believe what you've set up here is a two-tier pension plan. Instead of leaving the development of supplemental plans for police and fire officers to the discretion of the sponsors corporation, Bill 206 has been amended to override the sponsors corporation's discretion on this issue and to require the implementation of supplemental plans for police and firefighters within two years. In other words, you're basically saying to the police and the firefighters, "You don't have to worry about this legislation. You don't even have to go in and get the support of the other unions in the pension plan. We're going to give you special rights. You just have to go in and use your political clout to get what you want from Sudbury, Mississauga, Toronto or anywhere you like in this province," and automatically this plan will have to be approved, without anybody else whatsoever having a say in it, even if there are costs which we believe will be borne by some of our members. In other words, asking women earning less than \$30,000 a year to pay for the platinum pension plan for firefighters and for police officers is simply unacceptable. They don't even have to come and ask for our approval; they just get it because they used their political clout to be able to get what they need inside of their own communities.



We all know—make no mistake about it, because I'm fairly familiar with collective bargaining—when the police and the firefighters go up against the city of Sudbury, or go up against any one of those cities, that those local politicians don't have what it takes to stand up to the organization. We know that our members are going to end up paying the cost to pay for those supplementals. Meanwhile, the predominantly female majority of the OMERS members—for the most part, the less-well-off in the plan—are left to fend for themselves and to rely on a cumbersome and unwieldy sponsors corporation with a 22-member board to formulate pension arrangements that make sense for them. Clearly, this will create a two-tier system.

You can't trust the women of the province to go in and make these arrangements for supplementals; oh, no. We have to be forced into a 22-member board, where we don't even have proportional representation, where you actually stack the board, believe this or not. In some Orwellian move by McGuinty, you decided that Hazel McCallion's CEO, for example, is a union member, and they get a representative on our side of the house. What kind of convoluted logic is that? How can you in good conscience sit down and say that the CEOs that we negotiate with every day of the week in our municipalities and our school boards somehow have now been magically transformed into union members? They sit on the union side of the house when it comes to negotiations around supplemental plans.

How in God's name are we expected to try and get women negotiated out of the poverty traps they're in, finding themselves retiring into poverty with this pension plan? How are we supposed to do that with a CEO of any one of our municipalities or school boards sitting on our side of the table, purportedly as a union member? Only in Liberal logic could that actually work. What sort of convoluted—what can I say? It blows the mind just to even think that you would sit down and pretend that somehow you're working with unions in this province and say, "We're going to ask a CEO to sit on your side of the table," and we have to pretend that that's a good union member, a good solid CUPE member who's been putting their members out on strike for a number of years—and they'll be sitting on our side of the table. Only Liberal logic works that way.

Furthermore, under section 12 of the bill, the lower-paid members of the plan will be stuck with an effective accrual rate of 1.4% because of a 0.6% cap on potential improvements to the CPP offset. Contrast that, of course, to the sweetheart deal you've given to the police and the firefighters. We're stuck with 1.4% of an accrual rate, but you've got no problem whatsoever saying to police and fire, "You can have yours for 2.33%."

I know Mr. Duguid likes to think that police officers and firefighters are running into buildings while the rest of us are running out. Maybe he ought to take a look at what happened in 9/11: An awful lot of citizens and public sector workers went down in that building too, Mr. Duguid, and they didn't all run out.

By the way, there are not two-tier systems in here when it comes to workers. The workers of CUPE are every bit as important to the system in this province as the police and the firefighters. I don't accept your logic for one second that somehow there are two tiers here, that there's a second class of worker: one who wears a uniform and one who doesn't. I reject that kind of logic. Our members should be entitled to negotiate as good a pension plan as anybody else who's a public sector worker in this province, regardless of whether they wear a uniform or don't wear a uniform.

The two-thirds voting requirement, in our opinion, is anti-democratic and gives a minority of the sponsors corporation a veto over the wishes of the majority. In the circumstances proposed by Bill 206, such a veto will guarantee that the predominantly female members of the OMERS workforce will remain strictly second-class members of the OMERS pension plan in perpetuity.

For whatever reason, the government made a limited move toward the principle of representation by population at the sponsors corporation but not at the admin corporation. Moreover, purportedly seeking to balance employer and employee reps on both boards, a government amendment provides an employee seat on each board to the Association of Municipal Managers, Clerks and Treasurers of Ontario. These are the CEO guys I talked about. This group, which represents senior management in the municipal sector and constitutes less than 1% of the active plan members, has traditionally sat on the employer side of the table. In Liberal logic, they now sit on the union side of the table.

Here was CUPE, with 45% of the membership, at this last meeting around this table begging the Liberals to give us proportional representation based on our 45% of the members we represent. Again, in classic Liberal logic, you turn around and deny CUPE that proportional representation, and to add insult to injury, you turn around and take an organization with less than 1% of the membership in this province, who normally sit on the employer side of the table, and plop them onto the union side of the table. What was that about, Brad? Is that to stick it to us again? Is that to say, "Hey, you guys take us on on a regular basis. This is the Liberal way of sticking it to workers"? Less than 1%: How could you justify doing something like that to our plan members?

This is their pension plan. The last thing a person does before they leave the workplace—their pension plan is what they pick up. I've been knocking on doors, as the folks around the table know, in the last little while, and I've seen these people having retired into poverty.

Let me just finish up with one example. We've used a typical worker named Sally, who works for 35 years earning \$30,000 a year. She retires at age 65. She retires, under the accrual rate you've got entrenched in here, with \$11,900. There's not a city in this province where you can live on \$11,900; you'd be below the poverty level.

**1610**

Now, if that woman was a firefighter or a police officer earning \$30,000 a year, under the plan that they've got,



she'd be retiring with \$18,000 a year. Do you think that's fair? I don't. My members don't. That's why we're going to fight you on this bill. We're going to fight you every step of the way. We've got the strike mandates, and we're going to demonstrate to you what grey power is all about and what workers who stand together and fight for their rights is all about.

I reject the notions why Hazel and others came here before you to say, "Scrap this bill." I agree with the idea of scrapping it, but for different reasons. I don't believe it's going to be those huge, humongous costs that AMO are running around telling people. It didn't happen with the school teachers, it didn't happen with the OPSEU pension plan and I don't believe it'll happen with this pension plan either. Your logic is completely wrong, and our organization is going to take you on on this issue.

You've got until February 10, which is the deadline that we're setting, and we're asking you by February 10 to come to your senses and make the changes that we're asking so that we can have the ability to negotiate our members out of poverty and not get them ghettoized in these low-paying jobs, with no ability to improve their standard of living down the road. I'm asking you to do that before we get into a massive strike in this province, because we are not backing down from this one, I can assure you. It's too important to our members to sit back and allow the Liberals to stick it to these people, to low-paid workers, both men and women, in this province. It won't happen.

Thank you.

**The Chair:** Thank you, Mr. Ryan. Unfortunately, you've left insufficient time for anybody to ask any questions. We appreciate your being here today. Thank you very much.

#### ONTARIO PUBLIC SERVICE EMPLOYEES UNION

**The Chair:** Our next delegation is the Ontario Public Service Employees Union.

*Interruption.*

**The Chair:** Could I ask for a little order? If you need to chat, you could step outside so we can get on with our last two delegations, please.

Is it Ms. McVittie?

**Ms. Shirley McVittie:** Yes.

**The Chair:** Great. Thank you.

Could everybody take a seat or leave so that we can give this delegation our full attention, please?

Thank you, and welcome. Thank you for coming. You're very welcome here. If you haven't heard before, after you've introduced yourself and the group that you speak for, you will have 15 minutes, and should you leave time at the end, there'll be an opportunity for us to ask questions.

**Ms. McVittie:** Thank you. My name is Shirley McVittie, and I'm with the Ontario Public Service Employees Union. I'm a senior benefits counsellor there.

I want to thank you for giving us the opportunity to come again to make a presentation to you on this bill. We are pleased with the amendment in particular that includes paramedics in the supplemental agreements, because we have a number of paramedic members, and the recognition that there will be a committee that will include a representative from either OPSEU or CUPE.

However, we do have several matters that we believe must be addressed if this bill is to go through that would make it acceptable to our memberships, and these deal with the issue of governance, benefits for plan members and dispute resolution.

OPSEU has been a party to several negotiations in the last 10 years with respect to new pension arrangements for plan members, including the OPSEU pension trust and the CAAT pension plan. We've come to agreement on issues that we see are going to be problematic in Bill 206. So the first thing we would do is urge the government to provide an opportunity for the employee and employer groups to work together to establish a framework for the future governance of OMERS.

With respect to the sponsors corporation and the administration corporation, our members need assurance that their voices will be heard when the new legislation is passed. They're very concerned about the composition of the new sponsors corporation going forward.

We noticed in the new bill that the positions for the other member representatives, which is us, have been decreased from three to two, and that these two seats must be rotated through a list of at least 30 employee groups. As a union with approximately 8,000 members in OMERS, we believe we should have a permanent seat on the sponsors corporation.

OPSEU recommends that unions with an OMERS membership of 1% or more be given positions on the sponsors corporation and the administration corporation or, at a minimum, that only groups that have 1% or more be put in the rotational pool.

Although we understand the government's goal of fairness to all groups, we do not believe it fair or just to be included with groups as small as 22 members. OPSEU does not currently have a seat on the present OMERS board despite the size of its membership in comparison to other groups, and we do not believe this should continue.

A basic tenet of democracy is that the group or groups with the largest amount of support have a seat, but that they would represent all constituents or members. Our experience in other multi-employer, multi-union pension plans in Ontario is that the larger unions have permanent seats, and once there, they represent the interests of all employee groups.

I've heard other people today mention the amended two-thirds majority for a specified change. This is without precedent in pension plans in Ontario. I don't know of any other that has such a position. With a large board of 22 members, it will be difficult enough to achieve consensus on issues. With the addition of the new position for municipal managers, clerks and treasurers on the employee side of the two boards, it will be more



difficult for plan members to achieve a majority vote, and a two-thirds vote will be even more problematic. Currently, the treasurer of the city of Toronto—I don't mean to pick on this person; it's just that that person is sitting as an employer representative on the present OMERS board, and the amendment to place this position on the employee side upsets the normal employer/employee balance. We see these two proposals as serving to undermine plan member confidence and support, and OPSEU is opposed to them.

As well, access to mediation and arbitration must be expanded, not limited as presently in Bill 206. We believe that it should be available if there is a tie vote on issues and not require a majority vote. This again speaks to the issue of having a representative of the employer allocated to one of the employee seats. This may in fact put this person in a difficult position if, for example, the issue is one of a contribution increase and a municipal treasurer is sitting as an employee representative.

OPSEU members need assurance that moving plan responsibility from the government to a sponsors corporation will mean that their issues will have a fair chance to be debated and considered. Our experience in other plans where matters may be referred to arbitration on a tie vote that cannot be resolved at subsequent meetings is that the provision encourages compromise and consensus building. In fact, we haven't had to use it. In the initial phase of the new structure, interpretation issues are likely to arise, and the sponsors corporation will need a workable process to resolve them.

We note that paramedics have been added to the revised definition of "police and fire sectors." However, in order to be placed in the same position, paramedics need language in the bill that allows access to a normal retirement age of 60, in recognition of the work they perform similar to police and firefighters.

OPSEU continues to urge that the restrictions on benefit accruals for non-police and fire sectors be removed. There is no compelling reason to deny these workers future pension increases in the pension formula above 1.4% of their best five-year average earnings, while at the same time other plan members could achieve the maximum allowed under the Income Tax Act of 2.33% of their best three years' average earnings. The basic plan should not be frozen from the outset at an artificially low limit. There are already checks and balances in the funding arrangements—for example, the 105% reserve requirement.

**Supplemental plans:** The sponsors corporation must be required under the bill to create supplemental plans for all OMERS members as well as the police and fire sectors. The bill must also ensure that there is no subsidization of supplemental plans by the basic plan or payment of expenses by one plan for the other's costs.

**Future plans:** We note that section 9 of the initial bill regarding defined benefit plans has been deleted, which would allow a defined contribution plan to be introduced into the OMERS plan. We see this as a major change to the current defined benefit plan and one that OPSEU

clearly opposes. We do not see the need, in changing the governance structure, to make such a fundamental change to the principle of the pension plan. Thank you.

1620

**The Chair:** You've left about two and a half minutes for everybody to ask you questions, which is good.

Mr. Duguid.

**Mr. Duguid:** To begin with, you talked about being a little concerned about the large board of 22 members. Do you have a number to suggest that would be more appropriate in terms of the size of the board of the sponsors committee? You can talk about the administration committee if you like as well.

**Ms. McVittie:** I don't. I agree; it's large. It's cumbersome with so many groups, but I don't have a better suggestion.

**Mr. Duguid:** Okay, I appreciate that.

You also say, "The bill must also ensure that there is no subsidization of supplemental plans by the basic plan or payment of expenses by one plan for the other's costs." In other words, other members of the plan end up subsidizing the costs of the supplemental benefits, maybe for the firefighters, the paramedics or the police down the road. We totally agree with you on that. In fact, we brought in an amendment at the last committee meeting to strengthen it. Contrary to the submission of the previous deputant, Mr. Ryan, that somehow or another other plan members are going to be paying for these supplemental benefits, that in fact will not be the case. I want to assure you of that. In fact, we've offered to CUPE's lawyer that if they want to improve the wording that we've put forward, we're more than happy to sit down and see if that can be strengthened even further in the next round of amendments that will be coming. I want to make sure you're aware of that. I hope that brings you some comfort.

**Ms. McVittie:** It does. I did notice there were amendments. I just wanted to emphasize the fact that it should be specifically prohibited. I'm sure CUPE's legal counsel could devise wording that would allow that.

**Mr. Duguid:** How much time do I have?

**The Chair:** You have 30 seconds.

**Mr. Duguid:** It was mentioned by a previous deputant as well that somehow or another we're trying to sneak this through. Those were the words that were used. You're here today. This is the second set of hearings that we've had. It's almost unprecedented on bills; it's happened a few times, but very seldom do you go from first reading to hearings so that the public and stakeholders can have their say, back to the House and then back to hearings again after that. So I think that suggestion is totally ludicrous.

I just want to thank you for taking the time to put be part of what is almost an unprecedented set of hearings, the second set that we've had to ensure that we're hearing all the concerns being raised, and assure you that we'll take your suggestions under full consideration.

**The Chair:** Mr. Hardeman.



**Mr. Hardeman:** Thank you for your presentation. I'd just point out about the comments made by the parliamentary assistant that it is very uncommon, and I've expressed our appreciation before about having the hearings after first reading. I think it would be likely more often it's happened that a bill goes out for first reading—that a bill would get 60-some amendments from the government side after first reading when it's had no debate. No one looked at it other than the committee, and they come forward with 60-some amendments. So we really aren't talking about the same bill today as we were the last time we went through the process.

I just wanted to quickly touch on representation on the boards. We've heard a lot about it, that we need to find a way to have more appropriate representation for the smaller groups, because there are so many but they are also significant in the plan. If you do that, of course, if you have a representative for every 1%, then in rep-by-pop theory, you would need 100 members on the board. I think that would be unwieldy. Is there any suggestion that you could put? You could group your members. Is there a need to have CUPE members and like-minded people in the OPSEU bargaining unit not being able to be represented by one person, so you could group them together—like occupations—as opposed to based on bargaining units?

**Ms. McVittie:** It's theoretically possible. I just wanted to say that we wouldn't have a 100-member board. There are no more, I believe, than 10 organizations that have 1%, so we weren't suggesting more than that. We would be satisfied if only those 10, for instance—or as they change over the years—are on the list for rotational seats.

**Mr. Hardeman:** I guess my concern right now is that if OPSEU, with 1%—and I'm not saying these are the right numbers—gets a member, then CUPE, with 43%, wants 43 members to have the same representation on the board. I guess that's my concern about equality.

**The Chair:** Mr. Hardeman, you've exhausted your time. I'm going to give you the opportunity to respond to his comments if you wish.

**Ms. McVittie:** All I can say is that we have worked this out through other multi-employer, multi-union plans like the hospitals, for instance, and only the major unions have a seat at the table and it's not necessarily rep by pop entirely.

**The Chair:** Ms. Horwath.

**Ms. Horwath:** I find it interesting, being fairly new to the process, that the government is talking about its success in terms of getting through the first set of hearings and coming up with an amended bill. But what I've been hearing today from all sides of the equation, save for maybe fire and police, is that we've ended up with more of a mess than what we started with, that in fact the government is continuing to fumble the ball when it comes to this bill. The vast majority of stakeholders simply want it thrown out. Would you agree with that perspective at this point?

**Ms. McVittie:** When it comes to issues like the benefit cap, we see that as really so fundamental to our

members that they are precluded from negotiating benefits in the future, and we don't know what that future is going to look like 20 years down the road. So, indeed, we would see that as a worse position than the one we are in today.

**Ms. Horwath:** It seems to me that the issue of the inherent discrimination that exists in this bill is problematic, certainly from the workers' side if you want to describe it that way. I thought that would be dealt with by the government. Unfortunately, it has not yet been done.

I just want to end by saying that the government should maybe take a page out of Quentin Tarantino and kill this bill, by the sound of things we've heard today.

**The Chair:** Thank you very much for being here today.

## REGION OF PEEL

**The Chair:** Our last delegation is the region of Peel. Welcome. As you settle yourself, if you could introduce the individuals you have with you and the organization you speak for; you'll have 15 minutes. Even though I would like to give you more, I can't. You're the last delegation today, and should you leave time at the end there will be an opportunity for us to ask questions.

**Mr. Emil Kolb:** Thank you very much, Madam. I have with me to my right Mayor Morrison. She did not want to make a presentation but wanted to be here in support of the region. I know you had presentations from Brampton and Mississauga. On my far right is David Szwarc, who is the acting CAO for the region of Peel. On my left is one of our solicitors, Patrick O'Connor, who has been looking at and advising us on this legislation.

Let me thank you very much for being here today. As you know, the region of Peel bears the biggest budgetary responsibility for the benefits provided for both the members of the police service and the paramedics who provide Peel's ambulance service also. Just because there has been so much discussion about the financial side of it, I can tell you that our treasurer has been looking at this. I don't have the breakdown of each of the items, but from the region of Peel I know that our impacts would be upward to about \$16 million.

I also want to say that it was back in 2000 that I was probably the only politician, as I remember, who was there when police and fire did ask for a benefit in the pension plan to go to 25 years and out rather than the 30 years and out. Again, that was driven by those organizations. Our confidence in this bill not moving forward and activity taking place in this—our hopes are not too high that that isn't going to happen.

So what we would like to do today is give some suggestions of some options that we think need to be considered, in the same form as AMO's and others' presentations you have heard today.

The original bill achieved indirectly a requirement to consider increased benefits for the police, fire and ambulance sectors coupled with a low threshold of 50% plus one for a fundamental change in the plan. The amended bill imposes directly a requirement that the sponsors



corporation amend the pension plans to provide such increases.

These requirements are fundamentally inconsistent with the bill's supposed main purpose of removing the province from the plan sponsor role and establishing the sponsors corporation for that very same purpose. If the province should be making decisions like this one, why establish the independent sponsors corporation at all?

This provision, section 10.1, is heavy-handed dictation to the sponsors corporation for its very first key decision. It makes a mockery out of moving to a two-thirds majority requirement for the fundamental plan changes. This fundamental plan change is being made without even finding out whether there is a simple majority of the employer or employee representatives in favour.

1630

Our request is quite simply that you set up a sponsorship corporation in a workable fashion and let it get on with its business, if that's what the intent of the government really is, and not just a process to go through here. This bill should and will be about a workable governance for OMERS and not at all about the government's currying favour with particular interests.

Let me say again that when we say, "Let the sponsors corporation get on with its business," we don't mean in haste. A move as significant as shifting the essential responsibility for a fund that is approaching \$40 billion in value means getting it right the first time.

The sponsors corporation's responsibilities are complex, and by definition will be new, to a newly created body. The province for years has had the opportunity to cultivate in-house the expertise to deal with the plan, which new appointees to the sponsors corporation, no matter how accomplished they are in their own right, in my opinion will lack: the training, the expertise and the knowledge that they need to have.

Our request here is simply a matter of sensible management, that the transition of the sponsorship responsibility of the sponsors corporation be accomplished over time in a measured way calculated to enable the corporation to be adequately prepared.

Further, we join in supporting the submission of the OMERS board itself in its plea that there be a very clear definition of responsibilities between the sponsors corporation and the administration corporation to ensure that the role clarity is there by all means.

What do we say is "workable governance"? The amendment to create a partial two-thirds majority requirement is only halfway there. I say "partial," of course, because the bill still provides for the bypassing of the two-thirds requirement by forcing binding arbitration on the basis of a simple majority.

Fundamental changes to the plans that do not enjoy a broad base of support should not be made—and I think you've heard that many, many times today—two steps removed from the employers and the employees who are to be significantly affected.

We say that all fundamental changes to the plans should enjoy a two-thirds majority support for the sponsorship

corporation, thus removing the rationale for a binding arbitration process and resting decision-making authority and accountability with the body that the province rightly sees as better placed to play the sponsorship role.

We believe that there is general agreement among all stakeholders, and recognition on the part of the government, that solvency funding requirements under the Pension Benefits Act are unnecessary to any supplemental plans which may ultimately be made available, and that the solvency requirements are so prohibitively expensive as to be a barrier to supplemental plans no matter how much support there may be to provide them.

We acknowledge the statement of intent on the part of the Honourable Minister of Finance that OMERS supplemental plans be conditionally exempted from solvency funding requirements. We also recognize, however, that place to which the road is paved with good intentions.

We believe that any prudent sponsors corporation would insist on these questions being definitively answered before proceeding to make supplemental plans available. So much more so should the government, with the means at its disposal, provide that answer now, especially if it fails to accept our request to stand down on forcing supplemental plans upon the sponsors corporation.

Bill 206 already contains a number of consequential amendments. It should also direct amendments to the Pension Benefits Act to provide the necessary exemption.

Peel region comes to Bill 206 with the perspective of a public agency that is debt-free, with an impeccable credit rating and well-funded reserves that speak of prudent financial management.

I can tell you, we weren't always like that. When I became chair of the region of Peel, I made a commitment to my council and the residents of Peel that it would work toward having Peel debt-free. We achieved that in 1997. We also said we would work by DC charges and taxes to help fund capital costs in the future so that taxes would never be above inflation. Certainly, we believe that if this happens, they will be way beyond in the inflation rate.

If the government feels committed to the provision of enhanced benefit options to those in the police, fire or ambulance sector, it will want to provide those benefits in a sustainable fashion that does no harm to the plan as a whole. Our experience suggests that you can do that most effectively not by using the blunt instrument of legislation but rather by affording the sponsors corporation itself an opportunity to propose an innovative and responsible way to move forward, if that's what your desire it. It is not just what we want you to accomplish; how you get there is of tremendous importance.

In closing, thank you, honourable members. I join with all of my fellow municipal leaders in Peel region in urging you to focus Bill 206 on its essential purposes:

- (1) moving plan sponsorship to a better place;
- (2) providing a stable decision-making framework that requires the board's consensus for fundamental plan changes;
- (3) entrusting representative decision-making to make the decisions; and



(4) ensuring that they have the time, the training and the role clarity they need to do the job.

Again, thank you for hearing the region of Peel's perspective. I wish you productive deliberations as you complete your work.

**The Chair:** You've left us just a little over a minute and a half for each party to ask a question. The first questioner would be Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation. I guess it is the last one we're going to hear today. I suppose that throughout the whole day it hasn't changed that much. It's very well presented but similar to the ones we heard first thing this morning: the concern of the people involved, all the stakeholders, both employer and employee side, as to what this bill will do.

I think it's also very important that this is the first day we've had hearings based on the changed bill, from first reading. That should have addressed some of the concerns expressed at the first set of hearings. We're talking about the same things because the problems in the bill are in the same section of the bill. Although they were changed, they did not solve the problems that we heard about in the first set of hearings.

I think the main thrust of it is that, as you pointed out, we need numbers to show what happens, but I think you were very good at pointing out, with the limited information you have, that Peel can do a quick calculation on what happens to those services you provide and what will happen if this bill is implemented.

I guess the question that really comes out is, if the amendments or changes you're suggesting are not put forward, would you suggest that the bill can be fixed the way it is, or do you think we would be better off starting over and not passing this bill?

**Mr. Kolb:** I think you heard it very clearly from a well-spoken mayor that I have in my municipality: You need to do your homework first. Then we will work with you and give you the best information we can to make your decision.

**The Chair:** Ms. Horwath.

**Ms. Horwath:** Some of the other presenters indicated a desire to basically stop this process, take a step back and have the stakeholders—employer and employee—meet and hammer some of these things out themselves. It seems that you have a similar tone in some of your comments. You say the process right now is “‘two steps removed’ from the employers and employees who are significantly affected,” and then later on you talk about “entrusting representative decision-makers to make the decisions.” If this bill doesn't go forward, would you support a process that would bring the parties together to negotiate a plan separately?

**Mr. Kolb:** Let me ask Patrick O'Connor, our solicitor, who's very familiar with the bill, if he would respond.

**Mr. Patrick O'Connor:** The position we're bringing forward points out that there's a mandate in the bill to do certain things that we think the sponsors corporation ultimately is best placed to do; that is, to decide whether supplemental benefits are appropriate or not. Our main

point is, let the sponsors corporation make that determination without the heavy hand of a legislative directive hanging over them.

**Ms. Horwath:** So your remarks are specifically to the sponsors corporation, not to the bill overall, in terms of the process and the frustration that's evident from everybody who's been participating today?

**Mr. O'Connor:** The bottom-line position that Peel is bringing forward is that the bill in its present shape should not proceed.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Chairman Kolb, thank you again for being here and for the great contribution you've made through the years in the region of Peel. My question is on something that was in your written presentation that I didn't hear you speak about: the phase-in of the sponsors corporation and the responsibilities. It's going to be very important that there's a smooth transition. I'm glad you brought it up, because some other groups have, although they don't stress that aspect all that much. How do you see the transition on the sponsors corporation going? One group was suggesting potentially a slow phase-in of appointments so that you have some corporate knowledge there throughout the transition period. Is that something you have in mind when you talk about the transition, making sure it's done in a step-by-step manner?

**Mr. Kolb:** If I follow your question correctly, you need to pick that board very carefully. It needs to be hand-picked so you have some people with the knowledge of the legal side of it, some people with the knowledge of the financial side, and also HR people with the knowledge of the HR issues and pension issues and those kinds of things. It would be dumb for me to say today that I have an answer. First of all, if the government decides not to make any changes or to go back to discuss these issues, then it doesn't matter what I say in regard to your question. If the government truly wants to listen and do their homework and wants to make this happen, I know for a fact, having been around many years—it's no secret that there were letters from people who ran as Premier of this province that made commitments to fire and police and all of that. I recognize that, but I think we have to look at the taxpayer, who first of all pays the salary of the fire, police and paramedics, but who also pays the other half of the pension plan out of taxes and who has no right to the benefit in that. To me, it needs to be done very carefully. The board members need to be picked very carefully. So what if it takes 10 months or a year to do that if the province is going to proceed with it?

**The Chair:** Thank you, Mr. Kolb. We appreciate the region of Peel being here today.

This brings to a close our hearing today. I'd like to thank the witnesses, the members and the staff for their participation. This committee now stands adjourned until 10 a.m. on Thursday, January 26.

*The committee adjourned at 1644.*



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Mr. David McIver, research officer  
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# Legislative Assembly of Ontario

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## Official Report of Debates (Hansard)

Thursday 26 January 2006

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Jeudi 26 janvier 2006

### Standing committee on general government

Ontario Municipal Employees  
Retirement System Act, 2006

### Comité permanent des affaires gouvernementales

Loi de 2006 sur le régime  
de retraite des employés  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Thursday 26 January 2006

Jeudi 26 janvier 2006

*The committee met at 1001 in room 151.*ONTARIO MUNICIPAL EMPLOYEES  
RETIREMENT SYSTEM ACT, 2006LOI DE 2006  
SUR LE RÉGIME DE RETRAITE  
DES EMPLOYÉS MUNICIPAUX  
DE L'ONTARIO

Consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act /  
Projet de loi 206, Loi révisant la Loi sur le régime de retraite des employés municipaux de l'Ontario.

ASSOCIATION OF MUNICIPALITIES  
OF ONTARIO

**The Chair (Mrs. Linda Jeffrey):** Good morning and welcome. Thank you for being here today. After you've introduced yourself and the individuals at the table with you, should they be speaking, for Hansard, if you could record your name and the organization you speak for. After that you'll have 15 minutes. Should you use all that time, there won't be an opportunity for questions. If you leave a little bit of time, there will be an opportunity for us to ask about your delegation.

**Mr. Roger Anderson:** Thank you very much, Madam Chair. My name is Roger Anderson. I'm the president of the Association of Municipalities of Ontario and chairman of the regional municipality of Durham. To my right is Pat Vanini, our executive director, and to my left is Brian Rosborough, our policy staff. We're pleased to be here today and have the opportunity to once again make a follow-up submission to the standing committee on general government on Bill 206.

As a representative and advocate of almost all municipal governments across the province of Ontario, with more than 380 municipal members who are OMERS employers, AMO is profoundly concerned about the impact of Bill 206 and the potential for significant costs for municipalities and, ultimately, for the property taxpayers that we all represent. To date, AMO has heard from over 200 municipalities across this province citing concerns regarding the proposed legislation. AMO maintains that the province is rushing to reform one of Canada's most important pension funds without a reasonable understanding of the potential repercussions

and without sufficient regard to the best interests of the employees, retirees, employers, citizens and taxpayers, or the Ontario economy.

The government advised the Legislative Assembly at second reading of this proposed legislation that all of the input received by standing committee members was brought forward and taken very seriously. Yet amendments tabled to date reflect a fundamental, absolute disregard for the interests of OMERS employers, municipal governments and property taxpayers. Bill 206 is terribly flawed and fundamentally wrong. If this bill was once about the devolution of responsibility and autonomy to OMERS employee and employer members, it no longer is. It is now a bill that is first and foremost about ensuring access to enhanced retirement benefits for a select group of employee members.

AMO's preliminary analysis concluded that the potential cost impact for municipalities in Ontario for supplemental plans could be as much as \$380 million a year. This is estimated to be equivalent to a province-wide property tax increase of 3%. Over five years, this amounts to \$1.9 billion. This is equivalent to the full amount of the federal gas tax being transferred to Ontario municipalities over the next five years. How interesting.

While the amended bill appears to put some limits on benefit changes and the government has signalled an intent to remove the solvency requirement for supplemental plans, we have absolutely no doubt that there will be new OMERS costs, with not one penny finding its way into any service improvements for the public. The province has told the committee that AMO's costing is based on a worst-case scenario, as mentioned by MPP Brad Duguid. If they have any alternative data or actuarial analysis they can provide us, we urge them and call upon the government of Ontario to present it to us and to the public now.

Bill 206 provisions mandating supplemental plans for police, fire and paramedics will result directly in property tax increases and will undermine our ability to invest in communities, including emergency services. There will be costs, ladies and gentlemen. In fact, the amendments introduced subsequent to the last standing committee hearings, particularly the provisions making supplemental plans mandatory within two years and the addition of paramedics, would increase AMO's cost estimates dramatically.

Needless to say, the logistical challenges of supplemental plans are considerable and complex. All would have to be managed and administered by OMERS on behalf of approximately 900 employer groups, not to mention the anticipated significant increase in actuarial and technology costs. The OMERS board has speculated that the cost of lawyers and pension experts to advise the sponsors corporation in establishing province-wide supplemental plans alone is somewhere between \$5 million and \$10 million. These estimates don't even factor in the resources necessary to ensure the successful transition of the plan and support for the sponsors in educating themselves as they assume their new and very important role.

When Bill 206 was introduced, it outlined the potential for a number of supplemental plans to enhance the retirement benefits of OMERS police and fire service employees. Not only did government amendments to the bill after first reading introduce mandatory supplemental plans, but they also extended these provisions to paramedics and clarified that the definition of "police" now included civilian police services employees and not just front-line officers.

In debates of the Legislative Assembly at second reading, the government assured the members opposite that the rationale for providing emergency services workers special consideration in this legislation is that such noble careers are characterized by particular physical and mental challenges, necessitating personal and special sacrifices. Yet those OMERS employees in civilian police services jobs include office administrators, information technology services, human resources workers and school crossing guards. AMO is certain that it is only a matter of time before OMERS employees in other areas of employment outside the emergency services sector will seek the same access to enhanced retirement benefits as their colleagues in police, fire and paramedics.

1010

The tenets of Bill 206 will effectively change the face of municipal labour relations forever in this province. If you think AMO's last cost estimates for supplemental plans were a worst-case scenario, trust that you will see these enhanced benefits whipsaw across this province in the public sector, including the provincial OPP service. And at what cost to the taxpayers of Ontario?

Bill 206 introduces an unusual decision-making model whereby the sponsors corporation may make a specified change—an example would be a change to benefits or contribution rates—with an affirmative vote of two thirds of its members. If a proposal is neither accepted by the two-thirds majority nor rejected by a simple majority, the sponsors corporation may, by an affirmative vote of a simple majority of one, refer the proposal to mediation and an arbitration process. A little complicated, isn't it?

What the government must consider as inevitable, though, is that if an arbitration decision on plan benefits is rendered at the sponsors corporation level, then the likelihood of arbitration at the local level will happen

with great ease. Current arbitration decisions take decisions elsewhere and replicate them. That's a common fact. AMO cannot support such a model. In essence, a decision by an arbitrator could have significant impact on the municipal tax rate, without any regard for tax increases and the ability to pay, without any regard for the reduction of staffing and services to other programs, without any accountability whatsoever to the public, taxpayers or, better yet, the employees. It is an appalling means to supposedly protect the interests of the public of Ontario. The bill should simply include that the decisions for specified changes are subject to a two-thirds majority vote—full stop.

The proposed decision-making model is incomprehensible and unnecessarily complicated and flies in the face of the stated objective of the sponsors autonomy. As well, the government's amendments to make supplemental plans mandatory negate the rationale for an arbitration component.

To date, the government of Ontario has not provided any information to demonstrate that it has analyzed the potential cost implications of Bill 206 for any employers, including municipalities. OMERS estimates that the cost of implementing certain supplemental benefits could quadruple the costs, without solvency funding, in the first five years, placing an additional, perhaps even insurmountable, fiscal pressure on the employers and the employees who fund it.

Add to this the current financial performance of the basic plan that necessitates OMERS employees and employers to manage an average 9% increase in their OMERS contribution. Costs related to Bill 206's mandatory supplemental plans would be in addition—in addition, ladies and gentlemen—to the escalating cost for the basic plan.

AMO stands 100% behind our costing analysis as accurate, as should the province. When asked to provide their own fiscal analysis, the province of Ontario indicated that they are relying on figures supplied to them by the OMERS board. Well, AMO has also produced fair and reasonable estimates using OMERS data and actuarial information projected across 120 municipalities in this province.

Although the finance minister has signalled to OMERS his intent to recommend to cabinet that supplemental plans be exempted from solvency requirements under the Ontario Pension Benefits Act, nothing in Bill 206 changes the legislated solvency requirements. While we do not question the sincerity of the minister or his commitment, his promise provides no guarantee. It would be irresponsible for AMO or anyone else to adjust its current cost estimates under these circumstances. If anything, the original costs we provided to this committee and to the municipalities in the province of Ontario have grown. The \$380 million does not account for the new costs that were added to the bill at second reading: the extension of mandatory supplemental plans for paramedics or civilian police service employees.



Furthermore, even if we factor in a solvency exemption, the cost developed by OMERS actuaries at AMO's request projected a 10% increase in OMERS costs for municipalities with 1,000 employees. That's a 10% increase on top of the already escalating costs of the OMERS basic plan, with not one penny going toward better services for our residents. I guess that's not what the government would call a best-case scenario: a 10% hike in OMERS costs without one penny invested in better services. That means increased pension benefits supported by municipal taxpayers, including pensioners on a fixed income, for a pension plan that is already one of the most generous in this country.

Yesterday this committee heard from the Police Association of Ontario that the costs of supplemental plans would be low. So this committee has heard from stakeholders with different views and very different interests, and still the government of Ontario has refused to provide anyone on this committee or in this province with any information about the costs of this bill.

The notion that costing done from 2002 consultations has any bearing on Bill 206 is ridiculous. Is it possible that the government simply doesn't know what the true cost impacts of Bill 206 will be? What does this say about this bill and the work of this committee right here in this room?

We maintain that taxpayers deserve nothing less than full disclosure of the province of Ontario's costing analysis as part of due diligence on this major policy initiative. The government has commented on the credibility of our costing analysis. It's only fair that we should be able to comment on theirs. Unfortunately, they won't provide it to us. AMO feels so strongly about this, in fact, that we felt compelled to make a formal request, which is absolutely unheard of by the Association of Municipalities of Ontario, for information under the provisions of the Freedom of Information and Protection of Privacy Act, something we were reluctant to do, as our preference would have been that the government of Ontario provide us the information and the costings they should have gotten before this bill passes. To this day, we're still waiting for the information.

**The Chair:** Mr. Anderson, you have a minute left.

**Mr. Anderson:** You have a copy of the remainder of my comments, so I'm going to leave the last minute for any questions. I would hope that the province of Ontario takes a sober second look at this and really does their homework and makes their decisions from an informed basis as opposed to an uninformed basis, which we think is the situation today.

**The Chair:** Unfortunately, that was a total minute left. There's no time for questions. You've exhausted the time. I apologize.

**Mr. Anderson:** No problem.

**The Chair:** Thank you for coming today.

## ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

**The Chair:** Our next delegation is the Ontario Professional Fire Fighters Association. Good morning and welcome. Before you begin, please identify yourselves and the group you speak for for Hansard. Then when you do begin, you will have 15 minutes. Should you leave time at the end, there will be an opportunity for us to ask questions.

**Mr. Fred LeBlanc:** Thank you. My name is Fred LeBlanc. I'm president of the Ontario Professional Fire Fighters Association. With me today is executive vice-president Brian George. Also joining us in the committee room are many members from across the province, including many from throughout the GTA, right here in Toronto, the Niagara region, London and Kingston, and also representatives from the Police Association of Ontario.

I'm pleased to make a subsequent presentation on behalf of the OPFFA with respect to Bill 206. Attaining OMERS autonomy has long been a priority for the OPFFA and its members. This commitment has been recently underscored with the passing of Bill 211 and the ending of mandatory retirement in Ontario. While the OPFFA supported the maintenance of mandatory retirement within the fire sector, early retirement options within Bill 206 provide a possible solution for our members.

The OPFFA joined the Police Association of Ontario in September 2001 and jointly submitted recommendations for OMERS governance. That coalition was formed due to our common pension goals, and it remains today. I'm confident you'll notice the similarities in our respective presentations and recommendations.

Bill 206, as amended, fulfills our essential priority with the inclusion of supplemental plans or optional benefits for those within the police, fire and paramedic sectors. We thank the government for its recognition of Ontario's emergency responders in this manner and offer our support for the passage of this legislation.

1020

Notwithstanding, we do appreciate this additional opportunity, and we advocate for further amendments to meet the goals of our members and those of other stakeholders within OMERS.

You may recall that in our November 16 presentation to this committee we presented 10 recommendations. Through the hard work of this committee, Bill 206 was significantly amended for second reading. As well, the Honourable Dwight Duncan, Minister of Finance, has issued his support for solvency relief of supplemental plans. We acknowledge and applaud all of these efforts in the evolution of a new governance structure for OMERS.



Today, we have five remaining issues from our previous submission and one additional concern that we are putting forward to you for further deliberation. However, given the time restrictions with respect to our presentation, I'll just focus on four of our priorities.

On the supplemental plan issue for police, fire and paramedics, section 10 of Bill 206 was amended to include section 10.1, which can be found in appendix 1 of our brief. This amendment provides that "the sponsors corporation shall amend the OMERS pension plans to provide optional benefits for members of the primary plan who are employed in the police and fire sectors," understanding that definition for "police and fire sectors" now includes paramedics.

Sections 24, 25, 34 and 35 clearly identify the roles and responsibilities of the sponsors corporation as one of plan design, and the administration corporation as one to act as the administrator of OMERS pension plans, respectively.

The inclusion of section 10.1, in our view, has essentially designed the supplemental plan and thus fulfilled the role of the sponsors corporation. It is now the responsibility of the administration corporation for its implementation. It is therefore our recommendation that section 10.1 be amended to reflect that the responsibility of implementing these optional benefits be the role of the administration corporation.

As stated during our previous submission, the inclusion of benefits through a supplemental plan is of critical importance to our membership. We do recognize and appreciate the committee's and government's support in this matter. However, I must make comment respecting the employers' continued assertion that supplemental plans will cost the taxpayers millions of dollars, when the financial result of this amendment is zero.

I believe everybody here understands that these benefits are subject to negotiations, with all costs shared equally between employers and employees, yet the employers' spin continues to be fed by adding all of the optional benefits together, as well as assuming that all police, firefighters and potentially now paramedics are receiving these benefits on the same day. As we heard yesterday, many municipalities are still going outside the identified optional benefits within the amended bill in an effort to drive up any potential costs and unrealistically heighten the impact of their statements. This remains a totally unacceptable illustration. Obviously, the employers have a very high confidence level in our negotiating abilities yet do not recognize our members' limitations to pay their share for these benefits.

It is our position that this committee and, subsequently, the government have listened to the various employers' and the Association of Municipalities of Ontario's presentations. We take this view because the amendments found within section 10.1 go further than simply limiting the number of possible benefit enhancements. It also restricts the parties eligible for

these optional benefits to negotiate no more than one benefit as described until an initial agreement has been reached.

Notwithstanding, the language within this section requires some clarity. The issue of past service should be clearly defined. The 2.33% accrual rate has been identified under section 13 as a benefit, without the opportunity for past service applications unless paid for entirely by the employee. It is our position that the remaining benefits are eligible for past service recognition through negotiations. However, clear language would assist in recognizing this intent.

As well, subsection 10.1(6) states "an additional benefit." The language allows for an argument that it is singular in nature, resulting in the parties being essentially capped at two benefits. Our recommendation would be to delete the word "an" prior to "additional" and change the word "benefit" to "benefits" to clearly identify the intent.

With respect to defined benefit definitions, section 9 of Bill 206 originally contained the following wording: "Every OMERS pension plan must be a defined benefit plan." During the previous amendment process, this section was deleted. The OPFFA views this deletion of section 9 as the thin edge of a dangerous wedge. Eliminating a provision requiring all OMERS pension plans to be a defined benefit provides a new opportunity to significantly disrupt the foundation of our pension plan. Cementing the principle of defined benefit for all plans within OMERS will ensure that all stakeholders can rely upon a predictable pension, and we recommend reinstating the previous language within section 9.

Section 12 of the bill references the CPP offset. It describes a mathematical calculation with respect to the integration of OMERS with the Canada pension plan. It restricts the offset calculation or caps it at 0.6% where currently OMERS retirees are subject to 0.675% integration.

The problem with this restriction is that although it may be considered a slight improvement to the current status, in reality it places OMERS retirees at a distinct disadvantage in comparison to other retirees under other public pension plans in Ontario. Currently, the teachers' and hospital workers' pension plans offer 0.45% and 0.5% CPP offsets respectively, thereby giving their retirees a greater portion of their pension. We would therefore recommend that this section be deleted and that you leave this issue to the sponsors corporation.

With respect to the corporations, the composition of the sponsors and administration corporations were heavily scrutinized during the first set of committee hearings. The committee's response was an increase in the overall numbers on both corporations. While the attempt may have been sound in its intent to satisfy the, at times, acrimonious criticism, the result is two corporations that could be easily described as unwieldy. The OPFFA's position was to secure seats for the major stakeholders while maintaining representation for the OPFFA and PAO on each corporation. With the



significant increase in the composition for the sponsors corporation and administration corporation, the value of a seat has been greatly impacted.

OMERS recently issued an active member affiliation breakdown that can be found at appendix 2. For the employee side, the four largest stakeholders—CUPE, management employees who are non-union, police and fire—represent over 80% of the active members. It is important to note that the NRA 60 members in police and fire contribute at a significantly higher rate and thus have a much larger proportionate financial investment in the plan. Although collectively, police and fire represent slightly over 15% of the active members within the plan, OMERS has estimated that the NRA 60 members represent approximately 30% of the plan's financial status. A comparison of what an NRA 60 member would pay in contribution rates for this year versus an NRA 65 member is outlined in appendix 3, and that is from the OMERS website. You will see that an NRA 60 member potentially contributes an additional \$4,300 annually.

While we may not have the solution to satisfy all parties on the makeup of the corporations, it is our position that where the legislation refers to the composition of the sponsors corporation and the administration corporation, the language be amended so that at all times the corporation shall be composed of at least one representative from each of the OPFFA and the PAO.

In conclusion, once again we would like to acknowledge and thank the Honourable John Gerretsen, Minister of Municipal Affairs, and the Liberal government for introducing Bill 206. OMERS governance has been debated for far too long, and we applaud the very detailed action that has been taken thus far.

It is our position that this committee has responded to the priorities as presented by the various stakeholders and should not heed the intense criticism by very few stakeholders to stop Bill 206 and essentially go back to the drawing board.

Bill 206 does not discriminate against women and it does not discriminate against lower-paid workers, as is the claim of other stakeholders. Bill 206 does recognize the unique realities of Ontario's emergency first responders, many of whom are female, and facilitates opportunities to negotiate the ability to afford to retire earlier. As well, Bill 206 does not alter the premise that your pension is based upon your salary, but it does initiate much-needed flexibility within a very diverse plan.

This committee and the government should be proud of their work. We remain confident that Bill 206 will not introduce financial hardship across municipal employers and employees, as some would have you believe. The bargaining realities and the restrictions surrounding the optional benefits reflect the necessary balance on this very contentious matter. The PAO yesterday provided sample costing within their brief, and we would support those figures and arguments. Taking action on the amendments before you in addition to your previous work and encouraging swift passage of Bill 206 will

provide a governance structure that will greatly enhance the ability of OMERS to deliver its pension promise and allow people to retire with dignity.

The OPFFA would once again like to thank the members of the standing committee for this opportunity to appear before you today, and we would be pleased to answer any questions that you may have.

**The Chair:** You've left about a minute for each party to ask a question, beginning with Ms. Horwath.

**Ms. Andrea Horwath (Hamilton East):** I'm glad you raised the issue of section 9; I think that's an important issue and I'm glad to see it here.

I wanted to ask you, though, and it's interesting, because the issue of whether or not the bill discriminates—I know you were here for a little bit yesterday.

1030

**Mr. LeBlanc:** Yes.

**Ms. Horwath:** I read some of the comments in a paper you issued I don't know when, maybe yesterday, about that issue. It seems to me that the crux of the concern around discrimination is the extent to which the bill allows, for example, police and fire to go to the 2.33%, and what's allowed under the Income Tax Act, but other employees are not allowed to go to the maximum. I think the paper that you issued yesterday acknowledges that lack of equity, if you want to call it that. Can you comment on whether or not you see there being a lack of equity or a lack of equal treatment in that regard?

**Mr. LeBlanc:** On the 2.33%, that became a reality as a result of the changes to the Income Tax Act at the federal level, which recognizes certain occupations as public safety occupations. I guess I take exception to the fact that because we are recognized within the greater scheme of public safety occupations because of the nature of our work—us, police and paramedics now—that somehow discriminates against women. There are many female police officers, firefighters and paramedics as well. I don't know what that says toward those individuals, except that I believe they're quite insulted by the accusations as well.

**Ms. Horwath:** But you didn't address my specific question around whether or not allowing your groups to get exactly what they're allowed under the Income Tax Act and other groups—that's where the inequity, from the way I read it, comes in. So all of the other rhetoric aside, that's the issue, in terms of fair treatment, on that piece.

**Mr. LeBlanc:** I think the 2.33%, just to try and answer your question, is a reflection of our ability to retire earlier. In Ontario, many of the firefighter collective agreements and I believe many of the police agreements would have a mandatory retirement element within the collective agreements. For our fire sector, and I'll speak specifically to fire, it's NRA 60. You need the financial ability to make up for those lost income years, those five years, and that's where that extra 0.33% comes in. I don't find it discriminatory when, given the nature



of some of the other professions we're talking about, they allow for maybe a longer employment status, where I don't think that should be applicable in our profession.

**Ms. Horwath:** I see what you're saying. I think caps should be—

**The Chair:** Thank you, Ms. Horwath. Your time has expired. Mr. Duguid.

**Mr. Brad Duguid (Scarborough Centre):** Sid Ryan said yesterday that the government is asking other non-emergency workers to pay for supplemental benefits for firefighters. He went so far as to suggest that somehow these supplemental benefits are "sticking" it to their workers; that's the word he used. Madam Chair, my reading of the bill, and the advice I've received from staff, suggests that that is blatantly misleading, blatantly untrue, and in fact there's a clause in the bill that was strengthened in the last set of hearings, at CUPE's request, which strengthens and eliminates any possibility of rebound costs.

My question to you is, are Mr. Ryan's concerns legitimate, or is he misleading his own members in suggesting that somehow supplemental benefits will be paid for by CUPE members?

**Mr. LeBlanc:** I think he's vastly misleading not only his members but this committee and the public. I believe it's under section 14—I think that's the one you're talking about—that that was amended to strengthen the language to make sure there were no rebound costs, and that those who are eligible for supplemental plans or optional benefits would pay for those. OMERS a few years ago readjusted how it determines the rates for NRA 60 versus NRA 65, and we saw a significant increase in the rates paid by NRA 60 members to eliminate any opportunity for those types of accusations to be levelled.

**Mr. Duguid:** What do you think about Mr. Ryan's suggestion—

**The Chair:** Thank you, Mr. Duguid. I'm sorry; your time has expired.

**Mr. Duguid:** I'd love to have more time.

**The Chair:** I'm sorry. Mr. Hardeman.

**Mr. Ernie Hardeman (Oxford):** Thank you very much. First of all, I just want to make a comment about the parliamentary assistant's comment about presenters being misleading. I don't think there's anything more misleading than the minister's letter that suggests there will be no new costs and no new benefits in this bill provided.

**Mr. Duguid:** Do you agree with Sid Ryan—

**The Chair:** I'm not going to have cross-chatter. Mr. Hardeman, could you direct your question to the delegation.

**Mr. Hardeman:** I do want to ask a question to the presenters on the firefighters' position, and it's to do with the issue of the defined benefit plan, section 9. I spoke strongly against that amendment being put forward because I didn't think it should be taken out. I think that was there for the protection of the people involved in the pension plan and should be left in.

My understanding is that the reason it was being taken out was because the supplementary plans, if they are defined benefits—that if the premiums over time do not cover the cost for pensioners, then the whole OMERS pension plan would have to pay for those. I think that's where it comes in, where at some point in time the supplemental plan could cost the main plan money. Could you explain to me whether that would or would not happen if it remains a total defined benefit plan?

**Mr. LeBlanc:** I believe section 14 is the one that recognizes that for any costs associated with the supplemental plan, the actuaries have to provide an estimate back to the OMERS administration corporation, I'm assuming, or the sponsors corporation, to determine the appropriate contribution rates, and that takes into account your issue on the supplemental plan.

**Mr. Hardeman:** I guess my concern is, though, that we've had it in the past where actuaries make these projections, as they did with the OMERS plan a few years ago, and now find that it's somewhat underfunded. If that should happen in the supplemental plan, would the main plan then be obligated to cover the costs for the pensioners who have retired on the supplemental plan benefits?

**Mr. LeBlanc:** That's not my understanding of how it's supposed to work, anyway.

**Mr. Hardeman:** But that's my understanding of why it was put there, and I'm just pointing that out.

**The Chair:** Your time has expired, Mr. Hardeman.

Thank you, gentlemen. We appreciate your being here today.

#### PETER WYNNYCZUK

**The Chair:** Our next delegation is Mr. Wynnyczuk. Have I pronounced that right?

*Interjection.*

**The Chair:** Close? Wonderful.

**Mr. Peter Wynnyczuk:** I'm humbled here today and I do need your assistance. I did err on the front page, as you can see; a little bit of levity here.

**The Chair:** Welcome. We appreciate you being here. I'm just going to wait till the crowd at the back settles itself, so that we're not distracted, before you begin. If everybody could find a seat, please, we're about to begin, or have your conversations outside.

I presume you're not speaking for an organization; it isn't here on my delegations. You will have 15 minutes. Should you use all that time, there won't be an opportunity for us to ask questions. After you have introduced yourself, we will start the time.

**Mr. Wynnyczuk:** Thank you. My name is Peter Wynnyczuk and I am representing myself as an employee contributor to the OMERS plan through the municipal sphere. I apologize for the error I placed on the cover page and in some of the notations as to the number of the bill.

However, good morning, honourable members of the standing committee on general government and ladies



and gentlemen. Thank you for the opportunity to address you today. I look forward to your review of the comments and suggestions I have presented today.

I've had the honour of working in the municipal field for over 26 years serving the public. In that time, I have had many opportunities to better understand how municipal and other levels of government interact, give direction, solve problems, plan and make mistakes. Having lived through the high-inflation years of the early 1980s, the rapid growth of the mid-1980s, seeing the slide in the economy of the late 1980s and early 1990s and the relatively steady economic growth since then, this has led to significant shifts in investment opportunities, to a point that in the early part of the decade, as you well know, OMERS was in the position of a surplus, and therefore some of the offsetting surpluses were benefiting the members.

Also around the time of the late 1980s, OMERS was initiating the seeking of autonomy as it related to its role under the provincial government in respect of the administration and investment decisions that were needed to anticipate and take advantage of investment opportunities in a reasonable timeline. In 2002, times were very good for the OMERS plan, and the current and retired members benefited. As a contributing member to OMERS for many years, I have had no qualms with the accountability, the representation and the communication provided in various forms.

There is a footnote here about the federal government. The election seems to have been capturing the media's attention over the last number of months, but I understand that the bill was introduced back in June 2005. In speaking to various employees of different OMERS employers over the last week on this matter of Bill 206, they had none or very little understanding, as I had before my research began, on what was proposed in the bill and the potential impacts. Communication seems to have been disjointed or glossed over by the media, OMERS and employers, as it is not clear what action a member could take if they had an issue.

In reading some of the various documents presented, such as the OMERS newsletter of the winter of 2005-06, they seem to tread carefully and vaguely on how the changes will affect governance at one end, and then we have the major concerns that have been raised by AMO and CUPE.

The age of quality leadership and decisiveness seems to have been changed to a public perception of uncertainty and untrustworthiness of government in general. The media has unfortunately done a great job of highlighting issues that in the bigger scheme of things are an unneeded distraction.

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Today, the issue before the standing committee on general government has an impact potentially on the livelihood of up to a million residents, if you include family members in this province now and at some point in the future. In my understanding, this act not only revises the OMERS plan but changes the governance

structure. The key to this whole thing is that we have such a diverse range of employers and employees that it makes it much more difficult for you to try and come up with a reasonable solution. I'm paraphrasing that paragraph.

As an individual, this causes me concern that the best interests of the pension plan members do not appear to be served by Bill 206 in its current form. I shall try to highlight some of the issues that I have been able to interpret, as the act is, shall we say, written in a form that the average person is flummoxed by. If both the existing OMERS act and Bill 206 were analyzed side by side, you would think the only difference should be the sponsors group. This does not seem to me to be the case.

Generally, in my understanding, the province is currently in a position to ensure the operation of the plan. Under the new structure, the board of directors, after bylaws are enacted, will become, in my understanding, responsible as described under the Business Corporations Act. The sense I have is that the board members will then have a fiduciary responsibility, which is a paradigm shift from the current administrative philosophy. Expertise in the Municipal Act, Income Tax Act, Business Corporations Act, Pension Benefits Act and, if arbitration is included in the bill, the Arbitration Act will be needed. Therefore, the calibre of expertise will have to be raised, with no disrespect to current or previous board members, as the legal exposure was somewhat shielded by the province. Therefore, if a sitting member group wishes, they would have to nominate one from their ranks who may need exposure to financial/administrative management courses for those directors who need the skills to properly carry out their duties.

Overall, I believe there should be greater negotiations between the existing pension plan participants to develop a made-in-OMERS solution to the administration of the plan, similar to the OSSTF, before passage of this bill. My suggestion is that there should be a provincially guided opportunity for all of the stakeholders to come up with a workable governance structure prior to the enactment of Bill 206. This could then be more reflective of the interests of the diverse members of the existing pension plan.

If I'm inviting guests over for a party, I tend to think it's appropriate for the members of the household to have everything in order before the guests arrive. I sense that at this point this legislation still needs some reworking, and the affected parties should resolve some of the issues prior to enactment of the legislation—or the guests' arrival. The act I envision is to get the house in order first, then drive the legislation.

To help the process, the Ministry of Municipal Affairs and Housing should take responsibility to facilitate the meetings for the transition/governance committees and set a deadline of between six months to a year to come up with the governance and policies. This would help in the bylaw creation framework, as it would then be able to be included in the deliberations. This would reduce the pressure on the interim board and staff during the



transition to also have to deal with the creation and enacting of bylaws in a one-year period, as presently identified in the bill. It's not clear to me what the status of the applicability of the existing OMERS bylaws would be under the new model resulting from changes enacted by Bill 206.

Currently, in my opinion there have been many presentations on a piecemeal basis, either to support, suggest changes or to criticize the bill. As an individual contributor, the representation that I should be getting seems to occur on a consultative basis. This is not the same as in a goal achievement process, with direct contact and discussion of issues with the stakeholders. In presentations such as we have here today, the honourable members and staff present listen, make notes and analyze my presentation. Then they see how my comments and/or comments from other presenters can be incorporated, unfortunately in some cases on a disjointed basis, lacking cohesive background understanding. Therefore, if the current stakeholders and governance structure are advised to hold meetings to iron out the issues with direct provincial guidance before passage of the bill, greater success can be achieved, in my opinion. It is unfortunate that so much time and energy has to be put into this process under these conditions.

Based on the actions of certain vocal groups that have carried out recent media campaigns and sought support of large and small employers to voice a concern, it is not clear to me how successful the OMERS administration and stakeholders consultation process was. This does not instill confidence in me and possibly many other members if there is a sense of confusion and, it seems, confrontation at the pre-legislated stage.

My point is that this government has the responsibility to both OMERS members and the taxpaying public to ensure that the foundation for current and future members is built on a sound, fair and reasonably governed pension plan. Therefore, OMERS, stakeholders and the provincial government, through the Ministry of Municipal Affairs and Housing, have the responsibility—I emphasize the word “responsibility”—to focus energies on coming up with workable solutions to the issues that have been discussed here in my presentation. Therefore, I place the onus on the province to guide OMERS through the process before direct provincial sponsorship is divested by enactment of Bill 206. As someone once related to me, you can pave the road for the child or you can prepare the child for the road.

In closing, I would like to thank the honourable members of the standing committee on general government and the provincial staff for the opportunity to be here today respecting this issue.

**The Chair:** You've left about two minutes for each party to ask you a question, beginning with Mr. Ruprecht.

**Mr. Tony Ruprecht (Davenport):** Thank you very much, Mr. Wynnyczuk, for your presentation. You listened to the Association of Municipalities of Ontario and the Ontario Professional Fire Fighters Association,

and I want to have your opinion on something. It's very important.

You advocate in your presentation a paradigm shift, so you are really standing outside the box and looking in. What is your sense of the claims that were made about discrimination against those who make less than \$30,000, especially against women? From your research, is there any other pension plan in existence that advocates these kinds of changes that the professional firefighters and the police are suggesting?

**Mr. Wynnyczuk:** You pose an interesting question that I can't say I'm really comfortable in responding to. The premise of my presentation is to say that there should be a clear understanding and discussion with all the members. Each of them has diverse interests. This issue of a perception of some differences in priorities as far as the members go: That's something that should be worked out through the discussions with the stakeholders. My position is that this isn't ready to go forward. This should be put aside. Get the stakeholders to the table and get their house in order before then, because basically I understand that the province right now is the sponsor of this pension plan; they have a responsibility for the proper divesting. The question I have to ask is, then they are encumbered to make sure that their house is in order. The issues you mention or the question you ask me, I'm not really going to comment on that.

**Mr. Ruprecht:** I was especially interested in your comments because you want to think outside the paradigm. That, to you, is important, but I understand what you're saying. Thank you very much.

**Mr. Hardeman:** Thank you very much for the presentation, and I want to say that I find it interesting. It's well researched and it points out the problem that we have. When the bill was introduced by the minister it was focused on the devolution of OMERS to have a different governance model and to change the way the plan operates so it would be operated by employers and employees, as other pension plans are, and just to take it out of the realm of the provincial government.

Since the public hearings have started, nothing seems to be farther from the truth, because the fact is that all the debate and all the presentations speaking to the bill seem to be totally away from what the purpose of the bill was; they talk about supplemental plans for plan members. Of course, the municipalities have concern about supplemental plans because they say that's going to cost them a lot more money. People who are asking for the supplemental plans say that isn't the case: “We are going to pay for the supplemental plans,” and so forth. But it really is down to that that wasn't the reason the bill was proposed.

I share your concerns that we're going to pass a bill for the devolution that is not well suited for the devolution because we have spent collectively all our time debating supplemental plans, whether that's the right or the wrong thing to do. So I commend you for coming forward and saying, “Let's step back and look at what the purpose of the bill was and whether what we're



doing there is the right thing to do.” As we heard yesterday, a number of presenters say that the devolution shouldn’t take place because it would be better if the government kept it going.

What is your view?

**Mr. Wynnyczuk:** My view is that some of the other pension plans, as I understand it, are very specific to an individual or a group, such as the Ontario Secondary School Teachers’ Federation. That’s straightforward: Monies from the province flow through the boards to the teachers.

With the municipalities or other agencies or groups, monies in some cases are filtered through various other levels of government.

Therefore, there is a much broader, more diverse, with quite interesting and varied—their issue is that each group has its own priorities, and when you have such a diverse group, it certainly does become a challenge to try and get some consensus in this process. There may be an opportunity, in my opinion, to section off portions of it and for those specific groups to pick up their own pension plan, potentially, thinking outside the box, because that would be difficult.

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**The Chair:** Thank you. Ms. Horwath.

**Ms. Horwath:** I was interested in your presentation because I think what it really did was highlight what, at the end of the day, has turned out to be a very poor process in terms of trying to get consensus among the stakeholders. It’s unfortunate, because my understanding was that at the beginning of the process, at least around Bill 206, there was some consensus around the stakeholders, and what the government has succeeded in doing, unfortunately, is dividing the stakeholders, not along traditional lines.

Usually the employer stakeholders will have one position, employee stakeholders will have a different position, and that’s understandable; they’re coming from different perspectives. Unfortunately, in this bill you have employee stakeholders, and one section of them has a position and another section has a different position. Employer stakeholders are over here. Some people are interested in seeing the bill passed as it is or with a few amendments because it’s in their interests; others, employee stakeholders, want the opposite. That happens to be the same as—you missed yesterday—the shaking of hands between Sid Ryan and Hazel McCallion, who both want this to be slowed down because it’s not meeting the interests of their particular, different interests, but their interests.

It’s interesting that you call for the government to kind of take a step back and start over again. Would that be your advice, and what would you see as a more appropriate process to get this addressed?

**Mr. Wynnyczuk:** I think the government should step back. Because it’s gotten into the legislative aspect—it’s not within the ministry anymore; it’s gone to the general forum, as I could say. If it was reverted back to the Ministry of Municipal Affairs and Housing and got them

to get the players to the table, as I mentioned in my presentation, then maybe they could figure out if there are opportunities even for diversification of some of the plan members into other groups, potentially, where they have more common interests. Like I said, the diversity of the pension plan is quite significant. When you go from a nursing home worker to a tree climber to a person who’s working in a water and sewer situation, there’s quite a diverse risk-benefit and also opportunity.

**The Chair:** Thank you very much for being here. We appreciate your delegation.

**Mr. Wynnyczuk:** Thank you for your time.

## MUNICIPAL RETIREES ORGANIZATION ONTARIO

**The Chair:** The next group we are going to hear from is the Municipal Retirees Organization Ontario. Good morning and welcome. Thank you for being here.

**Mr. Don MacLeod:** Good morning. Thank you, Madam Chair and members of the committee. I see that you had on the agenda that Dan McIntosh was going to be with me, but that’s not the case. It’s Bill Winegard, who is our executive director.

**The Chair:** Are you Don MacLeod?

**Mr. MacLeod:** I’m Don MacLeod.

**The Chair:** Actually, my agenda was fixed. We have it right.

**Mr. MacLeod:** I just went on the website yesterday and thought, “Uh-oh. I don’t know who this Dan is.”

**The Chair:** We have the most accurate agenda in front of us. So welcome. Thank you very much for identifying yourselves, and the group that you speak for is the Municipal Retirees Organization Ontario. Is that right?

**Mr. MacLeod:** That’s right.

**The Chair:** Great. You have 15 minutes. Should you leave any time at the end, there will be an opportunity for us to ask questions.

**Mr. MacLeod:** On behalf of the 15,000 OMERS pensioners who are members of the Municipal Retirees Organization of Ontario, I would like to thank you for this opportunity to appear again at your second set of hearings. In addition, I would like to congratulate you for providing a second set of hearings. This is a very complex subject with lots of room for controversy and with long-lasting effects.

No group before you over the last two days is more concerned about the potential impacts of this bill than OMERS pensioners. We rely upon the OMERS for our livelihoods. Most of our life savings are in OMERS’ hands. Furthermore, we believe that the pensioners understand pensions in a way that no one else does. We have advice to offer.

MROO has always supported OMERS’ autonomy. We hope that all parties throughout this Bill 206 process are committed to taking the time to get it right. These hearings and your willingness to hear every group that requested it give us faith in the process.



At our first hearings, we presented a number of recommendations. We are grateful that one of these recommendations was accepted at second reading: that the retiree representative on the sponsors board would have voting status. This change will strengthen the pension voices of 100,000 retirees. We note, though, that several of our earlier recommendations were not accepted. Also, the wording of the bill after second reading introduces some new issues.

Unfortunately, it appears to us that the viewpoint of 100,000 pensioners has perhaps still not been fully taken into account. In this presentation, we are not reworking all the old ground; we are concentrating on pensioners' highest priorities: (1) our hope for improvement to the basic plan, and particularly for a reduced CPP offset if and when the fund can safely permit pension improvements; (2) a strong and effective voice for pensioners in the pension plan, consistent with our unique stake in the plan and the fact that almost 30% of its assets were generated with pensioners' money.

Pensioners' priority number one is to remove the 0.6% CPP offset limitation in section 12. Almost 30% of the assets of the plan were generated with the contributions over the last 40 years of today's pensioners. As the number of retirees increases, so will the pensioners' portion of the assets. While few current retirees may see a surplus situation which would permit a reduction below the 0.6%, we see no reason why the option should not remain at the discretion of the sponsors in future decades, subject to the bill's other safeguards. In our view, it is not necessary to legislate with respect to the CPP offset, and it is not consistent with the rules pertaining to other public sector pensions.

As a corollary to this recommendation, we recommend that the Legislature remove the reference to the solvency basis of computing OMERS liabilities in section 15. The 105% required minimum ratio of going concern liabilities to assets already will guarantee the prudent management of the fund. Adding words about the ratio of the fund's assets to the solvency liabilities is unnecessary, and it just delays the time when OMERS' successful investment strategies will produce an actuarial surplus and enable the sponsors to consider reducing the CPP offset. We want to make it clear that we are not talking about the Pension Benefits Act. Reference to solvency liabilities can be removed from section 15 without any commitment by the government on the larger question.

Our second priority is to ensure an effective and balanced voice in OMERS governance for all OMERS pensioners. In our earlier submissions, we advocated two retiree representatives on each board. This remains our preferred option. It would permit proportionate representation closer to the pensioners' financial stake in the plan. It would permit permanent representation from both NRA 60 and NRA 65 retiree organizations. MROO hopes that you will reconsider our earlier recommendation. However, after second reading, the bill still limits retiree representation to one on each board. Furthermore, it still suggests that this representation

would be selected over time on a rotational basis: largest organization first, second-largest second, and so on. As noted in our earlier submissions, this rotational method is completely unworkable. It would permit small, marginal groups to claim a turn. It would permit groups representing retirees in only one small part of this large province to claim a turn. It would encourage every union to create a retiree section, however small, and claim a turn. It would disenfranchise NRA 65 retirees, who are 85% of the total, for long periods. It would place an undue onus on the OMERS staff to do a membership census and lead to questionable membership criteria and counting.

If the Legislature chooses to limit retiree representation to one on each board, we believe there is only one way to ensure consistently effective and balanced representation for all OMERS retirees. Municipal Retirees Organization Ontario is the logical body to appoint the retiree rep on each board on a permanent basis. I say this not because it benefits our organization in any way—it doesn't—but because the nature of our organization provides a logical way for the Legislature to ensure consistently effective and balanced retiree representation. MROO represents former employees from all walks of municipal life, including police officers, firefighters, union and management. MROO is not restricted to either union or management viewpoints, nor to either NRA 65 or NRA 60 categories, and is able to work with all sides.

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MROO has many more members than any other OMERS retiree organization. MROO has membership across Ontario. MROO has stable funding and therefore has the resources to consult other OMERS retiree organizations, to work with those organizations to find the best candidate to communicate with retirees across Ontario, and to ensure a well-rounded voice for all OMERS pensioners.

MROO has a credible record of almost 30 years speaking for pensioners and understanding pension matters. MROO has consistently nominated well-qualified retiree representatives for the OMERS board since retiree representatives first went on the board in 1992. These have included a retired police officer, a retired school board administrator and a retired manager of municipal budgets and investments.

MROO's selection process will include prior consultation with all known OMERS retiree organizations. MROO is the only retiree organization representing all OMERS retirees and with the ability, interest and track record to ensure a balanced and effective voice from all elements of the OMERS retiree sector. Subsection 39(5) of the bill should make the Municipal Retirees Organization of Ontario responsible for appointing the retiree representative on each board and be amended accordingly.

We see two additional obstacles to ensuring that both boards have effective retiree representation. The first problem is section 56 of the bill. This section contains a



“drop-dead” provision, which virtually guarantees three or four years of chaos and unnecessary cost for the newly fledged OMERS sponsors board. As of the end of 2009, it wipes out everything in the bill regarding composition of the boards and requires the newly recreated sponsors board to start all over again.

This committee and the Legislature, as well as the groups who have spoken to you, have given considerable time and thought to a workable structure for the OMERS boards. They are trusting you to refine the bill accordingly, not to create another free-for-all in three years’ time. The structure created in the bill should remain in place until and unless amended by bylaw of the sponsors, pursuant to subsection 23(1). Therefore, section 56 should be deleted.

Subsection 39(6) of the bill creates a similar problem. In keeping with the drop-dead provisions discussed above, subsection 39(6) limits the first term of office to three years, i.e., until December 31, 2009, unless the sponsors pass a bylaw to adopt a structure for the two boards before that date. If the Legislature is not willing to remove the 2009 drop-dead date, an alternative would be to give the appointing organizations the right to extend the term of a member for a further three years. It is our observation and that of many past and present OMERS board members that many new OMERS board members have a steep learning curve. Three years is too short a time to get the best out of the board members who have learned what they need to know to be effective.

Once again, thank you for the opportunity to give you our pensioner’s point of view as you consider this important piece of legislation. Best wishes in your deliberations.

**The Chair:** You’ve left about a minute and a half for each party, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation. I just wanted to point out that in the community that I represent, when they talk about Bill 206 and the pension, it’s generally the retirees who are talking about it. The other members of the plan who are presently still working seem to be quite oblivious to the fact that this is happening at all. But the retirees have great concern as to what the changes to the plan will do to their pensions and their livelihood.

I’m just wondering: As you made your presentation, you said there was only one thing from your previous presentation that was incorporated in the amendments and that you appreciated that being put in. Would you suggest that it’s good enough to take that and say we should now pass the legislation in its present form, or do you believe that more consultation with both your membership and the membership around the province is required in order to come up with a plan that will serve us all well? You seem to imply that discussions will lead to solutions to some of these problems, as opposed to being forced to do it. Could you comment on what you think we should do to proceed from here?

**Mr. MacLeod:** I’ve been giving you the viewpoint of the retirees, and if all of those things we were asking for

were passed, then we would say that maybe they should go ahead. But we would say they should wait until everybody else is happy, because you don’t have a very good plan if you have sides fighting all the time. I think you must sit down and resolve all the problems before you go ahead and pass the bill.

**Mr. Hardeman:** Can the solving of those problems be done here by this committee, or does it need to include your membership?

**Mr. MacLeod:** We would like to be part of the solving of any problems. As I said, I thanked you for what you did on first reading, but on the second reading, I said that we have some of these issues that are still important and we would like you to seriously look at those.

**Ms. Horwath:** Nice to see you again. You raised the issue last time around about the restricted term of office to three years. Looking at your presentation and reviewing what happened in terms of amendments, the amendment the government put forward didn’t open it up, as a way to describe it. I think the government, instead of putting a strict three-year term of office in the bill, has said a three-year term unless that’s amended by the sponsors corporation. Can you tell me why that’s not good enough, in your opinion, in terms of a change?

**Mr. MacLeod:** Especially in the case of the retirees and in the case of some of the other places where there’s going to be a rotation—and as I pointed out, if we rotate with the largest group first and then the second and the third, we don’t have that choice of keeping that person on. If you’re in one of the representatives where you have an automatic seat, then that person could stay longer. I know the bill says that it’s three years, but we’re saying, especially in the case of the retirees, where we have to rotate, that it should be six years once that person gets in there, because then that person has more expertise to continue at that time.

**Mr. Duguid:** Your organization sent out a letter to your members some time ago. I assume it was not on purpose, but it led some of your members to be misinformed into believing that their pensions were somehow threatened by this legislation. I know that you know, because we’ve talked about this, that that is not the case. Retirees’ pensions are not in any way threatened by this legislation. They’re secure and will be secure, and we’ve been able to reassure retirees of that. I would hope you would join us in doing that.

I was a little surprised that you didn’t mention the fact that retirees are being designated two voting positions on both the sponsors committee and the administration committee, something that doesn’t exist in any pension plan that we’re aware of across the country. So the ability of retirees to have input in future decisions is enhanced, greater in this pension plan than potentially any other. I’m a little surprised you didn’t bring that up. You didn’t bring it up in your letter; you didn’t bring it up today. To be honest with you, I don’t understand why you wouldn’t. I would have thought you would have come



here today to suggest that is a good thing, unless you don't think it is.

The question I have for you is, who paid for the correspondence that you sent out to your members?

**Mr. MacLeod:** We did.

**Mr. Duguid:** Who funded that correspondence?

**Mr. MacLeod:** We did.

**Mr. Duguid:** I've been told that CUPE funded that.

**Mr. MacLeod:** No, no. CUPE had no funding in that whatsoever. That is our correspondence; that is money that we paid for. As I said in our presentation, we have secure funding and we can do all the things that we've said we want to do, that we would like you to do, if we are going to be selecting them.

**Mr. Duguid:** My question to you is—

**The Chair:** Thank you, Mr. Duguid. Your question time has expired.

Thank you, gentlemen, for being here today.

1110

CANADIAN UNION  
OF PUBLIC EMPLOYEES,  
AMBULANCE COMMITTEE

**The Chair:** Our next delegation is the Canadian Union of Public Employees, ambulance committee. Good morning and welcome.

**Mr. Michael Dick:** Good morning.

**The Chair:** I only have two names here, so if you could identify yourselves and the organization you speak for when you get yourselves settled. After you've introduced yourself, I will set the clock for 15 minutes. Should you leave time at the end, there will be an opportunity for us to ask questions.

**Mr. Dick:** Great. Good morning. I'm Michael Dick and I'm the chairperson of CUPE Ontario's ambulance committee. To my left is Joe Matasic, CUPE staff, ambulance coordinator, and to my right is Antoni Shelton. He's the EA to the CUPE Ontario president.

I'd like to thank you for allowing us this opportunity today. This follow-up presentation supplements our original submission that was presented to the committee. Following a clause-by-clause and second reading of the bill in December, we made a decision to focus on one core issue. Like other CUPE presenters, we are very disappointed with Bill 206 as it stands. The government amendments introduced at second reading render the bill deeply flawed.

It is our understanding that the intent of the revised meaning of police and fire sectors in Bill 206 was to put paramedics on the same footing as other individuals employed in the public safety occupations. However, there appears to have been an oversight in carrying this out. Currently, if Bill 206 becomes law without any changes, paramedics will not be on the same footing as those employed in the police and fire sectors for the purpose of normal retirement age 60 provisions of the primary plan.

While the bill includes paramedics with the fire and police sectors for the purpose of the proposed supplemental plans, it does not address the core issue, which is the normal retirement age for paramedics. The purpose of the federal income tax amendments recently passed was to allow employers to provide the same enhanced pension benefits to paramedics as are currently allowed for police and firefighters. In OMERS, this would be achieved by providing enhanced benefits commonly referred to as normal retirement age 60.

The NRA 60 provisions are currently set out in the Ontario Municipal Employees Retirement System Act, regulation 890. Subsection 12(3) of the regulation provides that: "(3) An employer may change the normal retirement age of all members or any class of members who are police officers or firefighters from 65 years to 60 years by submitting an election in writing to the president."

As you can see, paramedics are not included in this regulation. However, this is the section that implements the public safety occupation benefits of the Income Tax Act. As it currently stands, Bill 206 does not amend subsection 12(3) of the regulation to include paramedics in the normal retirement age 60.

In addition, our understanding is that Bill 206 will establish the current plan as the basic plan. If the legislation is passed without the regulatory changes, paramedics would be excluded from the NRA 60 portion of the current plan. Therefore, under OMERS, paramedics would be denied the benefits of early retirement as provided for in the Income Tax Act. In order to implement the Income Tax Act public safety occupation changes, the basic plan would need to be amended to include paramedics in section 12.

I'd like to thank the committee for the opportunity to address our concerns. If there are any questions, we'd be pleased to answer them.

**The Chair:** You've left about three and a half minutes for each party to ask questions, beginning with Ms. Horwath.

**Ms. Horwath:** I'm just trying to recall if this issue was raised by you in the last round.

**Mr. Dick:** Yes, it was.

**Ms. Horwath:** Did you receive any correspondence or any acknowledgement from the government that this was a problem that they were going to address in any way?

**Mr. Dick:** Not on that issue.

**Ms. Horwath:** So they pretty much just put this aside, and although they are saying they're bringing paramedics in in their description of what they've done in this bill, what you're saying is that in effect, a big piece of that is not being addressed by the bill.

**Mr. Dick:** Right. There are really no benefits to the changes without this change being implemented.

**Ms. Horwath:** Okay. Well, I don't know what the government's intentions are, but I would hope that they would be prepared to undertake the appropriate amendment. I'm surprised that they're saying verbally that that has happened, and yet the actual language that



brings that into effect doesn't exist—that's what you're saying.

**Mr. Dick:** Correct.

**Ms. Horwath:** Can I ask you, from your perspective, having participated thus far in this process, do you think that this bill is in a position now, after second reading, in this process that we're in now, in a place where it should go forward in its current state, or do you think there is some other process that needs to take place to bring all parties on side?

**Mr. Dick:** I think there's still a lot of work that has to be done. Stakeholder meetings would be somewhere to start, but I think there's still a lot of work that has to be done on the bill.

**Ms. Horwath:** Do I have any more time?

**The Chair:** Yes.

**Ms. Horwath:** It seems to me that we're in a position now where the government's trying to demonize a particular group of employees in their attempts to try to get what they think is the appropriate model or the appropriate issues addressed in the bill. It seems to me that today's language coming from the parliamentary assistant is very strong, and it harkens back to a previous government that tried to demonize a certain section of workers. In that case, it was teachers; in this case, it happens to be CUPE workers. Can you comment, in terms of being a member of that union, how you feel about the government and the kind of language that has come from the parliamentary assistant today?

**Mr. Dick:** Big question. I am part of a big organization, CUPE. There have been some issues that have been brought forward from them, and there's been a lot of dialogue from across the table which I'd rather not get into. They have their position that they're taking. It looks like maybe there are some people getting their backs up over that, but it's the paramedics that I'm here to represent. We always seem to be left out. We don't know why; we're wondering if we've done something to somebody. All the way through the process—I've been a paramedic for 26 years, and we always seem to be trying to fight to get the same luxuries that the police and firefighters have. Now we think that we have that chance, and still we were left out after second reading.

**Mr. Duguid:** Thank you, Mr. Dick, and thank you for your representation of the paramedics today and always. The first question I have for you is, I've been advised with regard to this issue that we legally cannot include this in the legislation, that it's something that has to be negotiated from a legal context. I'm not a lawyer; I don't know exactly why, and I want to get a little bit more information on that. Do you have any legal advice on this matter? If so, if you could share it with committee, that would be great. If not, if you can't share it today, I'd be very interested to hear something on that which would suggest that we can do a little more than we're doing.

**Mr. Dick:** I'll let Mr. Matasic address that.

**Mr. Joe Matasic:** Subsection 12(3) of the regulations established the framework for providing the enhanced benefits that employers are entitled to provide under

OMERS and under the Income Tax Act public safety occupation group provisions. Our understanding is that the government does have the capacity to amend the regulation in the normal fashion.

The understanding that we've gotten through advice from our counsel is that government could also include in this bill a provision that would amend the current regulations or that would serve to amend that section, section 12 of the regulation, which would have the effect of including the paramedics along with police and firefighters.

**Mr. Duguid:** Thank you. We'll certainly look into that.

The second question is, yesterday we heard Mr. Sid Ryan disparaging our province's emergency workers and suggesting that there's nothing unique about their jobs compared to other CUPE members. I've been out on the ambulances with paramedics on a number of occasions in Toronto, and I've seen first-hand the difficult job you do, the unique circumstances, and the reasons why careers for emergency workers—in particular, paramedics—often necessitate earlier retirement. I understand that and recognize that from being out first-hand with your members. I guess my question to you is, do you share those views, or do you feel that emergency workers and paramedics are in a unique circumstance, recognizing that unique circumstances are warranted?

**Mr. Dick:** I must have missed the comments from Mr. Ryan to that—

**Mr. Duguid:** It's too bad you weren't here.

**Mr. Dick:** —because that's not what I heard.

**Mr. Duguid:** It would have been nice if you were here.

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**Mr. Dick:** Yes, I do agree that police, fire and paramedics do a different type of work. It is very stressful. It does shorten careers. That's why we've now been included in the public safety occupations.

As far as other people's positions and jobs in CUPE, they all are important, top to bottom, so we should all be treated as equals. On certain points, I think he was getting toward the supplemental plans, where he was concerned about the plan in general paying for the upgraded early retirement option.

If I could as well—

**Mr. Duguid:** You've had a look at that, I'm sure, and I'm sure you recognize that our intention in the legislation is that there will be no costs going on, that if paramedics get access to these benefits—and they'll have to negotiate with municipalities to get that, so we don't know what's going to happen, but it may be, depending on your negotiations into the future—those costs will not be subsidized by other members of the CUPE plan. Have you had a look at that, and can you confirm that's your understanding?

**Mr. Matasic:** I could address that. First, going back to your previous point, CUPE does unequivocally support early retirement for paramedics.

**Mr. Duguid:** It didn't seem to yesterday.



**Mr. Matasic:** CUPE has been very clear about that. The issue that CUPE—

**Mr. Duguid:** They weren't clear yesterday, I can assure you.

**The Chair:** Mr. Duguid, let him answer the question, please.

**Mr. Matasic:** The issue that Mr. Ryan has raised with respect to the legislation has to do with the governance, with the accrual cap, with how workers other than the police and fire sectors are treated with respect to that group. I don't think anybody is saying that that group should be kept down. I think the concern CUPE has is that other workers aren't being afforded the same rights as police and firefighters.

The position we take, including the CUPE paramedics unequivocally, is that other workers deserve in every respect the same rights, benefits and privileges as the police and fire sectors. The purpose was never to denigrate or to diminish those particular sectors. It's merely to say that CUPE members, the other members of the plan who are not police and firefighters, or paramedics, for that matter, deserve consideration as well throughout the process.

**The Chair:** Thank you.

**Mr. Duguid:** That's not what we heard, unfortunately, but I understand that's what you would like to believe.

**The Chair:** Mr. Duguid, your time has expired. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. I too had the privilege of sitting in on the presentation yesterday, and I think Mr. Ryan was quite clear. It's not often I speak in support there, but it was quite clear that he was talking about the general terms of the change for the plan and that he did not believe it was fair to cap certain employees as opposed to giving everyone the same opportunity. He never spoke to the fact that there should not be supplemental plans for the police, fire and ambulance services. I think it's important to put that forward.

On the issue of early retirement and the part that you suggest still doesn't apply to the ambulance workers, if a supplemental plan was put in place and it was negotiated, the early retirement would only apply to ambulance workers if there is a supplementary plan that you negotiated. Am I to understand that in the other section of the regulation, the early retirement possibility is there now, in the main plan, for police and fire?

**Mr. Matasic:** If I could address that, the early retirement provisions of OMERS, as they exist now, are contained in the basic plan. Our understanding is that that will be continued if Bill 206 passes. The supplemental plans are in addition to the basic plan, which includes the early retirement provisions for police and firefighters. That's the core section of the plan that establishes the basic early retirement provisions. That's the part we're most concerned with.

The supplemental inclusion in the police and fire supplemental plans is a step in the right direction, but without amendments to the basic plan, it would in effect

be meaningless for the paramedics. That's a very, very important piece of the entire picture.

**Mr. Hardeman:** I take the parliamentary assistant's comments as the fact that they've kind of overlooked that that part of the bill should be changed to include the ambulance service within that. You're suggesting, then, that if that part isn't changed, when supplemental plans are put in place you would not be eligible for the NRA 60?

**Mr. Matasic:** That's correct, yes. If the basic plan, as it stands now, is not amended to include paramedics in subsection 12(3), then paramedics would not be entitled to the normal retirement age 60.

**Mr. Hardeman:** Thank you very much, and I think my colleague has a question he would like to ask you.

**The Chair:** You have about 30 seconds.

**Mr. Jerry J. Ouellette (Oshawa):** One quick question. The way the bill is laid out now, would you rather see it move ahead or go back and be cancelled and start from zero?

**Mr. Dick:** As the plan is now?

**Mr. Ouellette:** Yes.

**Mr. Dick:** It would be devastating if the plan went ahead as it is now.

**Mr. Ouellette:** So you would rather not have it go ahead in its present form.

**Mr. Dick:** That would be our decision.

**The Chair:** Thank you, gentlemen, for being here today. We appreciate it.

**Mr. Duguid:** I wonder if I could ask our legislative research staff—and perhaps the deputants who are just leaving might want to listen to make sure the wording is good—to review the comments made on the NRA 60 provisions in this last presentation and report to committee on whether there are legal options for the government to accommodate those concerns. Would that wording be specific enough for you to do that?

**Mr. David McIver:** Yes, I will look into that.

**Mr. Duguid:** Okay, and perhaps you might want to consult with ministry staff as you do that as well. Thank you.

CANADIAN UNION  
OF PUBLIC EMPLOYEES,  
LOCAL 79

**The Chair:** Our next deputation is the Canadian Union of Public Employees, Local 79, Toronto. Good morning and welcome. I'm just going to wait until the chatter outside ends so that you have our full concentration. Before you begin, if I could remind you to introduce yourself, anybody you would like to introduce who's with you, and the organization you speak for. When you do begin, you will have 15 minutes. Should you leave time at the end, there will be an opportunity for us to ask questions.

**Ms. Ann Dembinski:** My name is Ann Dembinski. I'm the president of CUPE Local 79. With me today is Jackie Latter. Jackie is on staff for Local 79.



I thank you for this opportunity to speak to you once again. It's the second time I have been here before this committee. I just want to remind you who Local 79 is. We are the largest municipal local in Canada; in fact, probably one of the largest locals in any area. We represent the city of Toronto, the Bridgepoint Hospital and TCHC. Our members work in public health, in homes for the aged, in social services, in parks and recreation, in housing, in ambulance services and in the courts. We represent child care workers, registered nurses, ambulance dispatchers, planners, hospital workers, building inspectors, shelter and hostel staff, public health nurses, water and sewage treatment employees, and cleaners who work in the city of Toronto, including the police stations.

Why are we here again? When we came here in November, we were optimistic that the government would listen to our concerns and make the appropriate amendments. In fact, Mr. Duguid even said after our presentation, "I just want to assure you we'll be taking your recommendations very seriously. I don't know if they will all be included in amendments, but certainly we'll seriously be looking at them. You've made some good suggestions."

Not only is the government ignoring our recommendations, but the 11th-hour amendments included at second reading in December 2005 have made a bad situation even worse.

What are our concerns? CUPE Local 79 continues to have grave concerns with the proposed legislation regarding discrimination against women and other low-paid members of OMERS. We have already said that the capping of pensions is unfair and will create inequities. When we appeared before this committee in November 2005, I told you that there is serious systemic gender discrimination inherent in this proposed legislation. Most of our members are women, many of whom entered the workforce later in life. This adversely affects their ability to accumulate adequate pension benefits. Many of them have difficult and stressful jobs. Some of our members even have dangerous jobs. Many of our members work in the essential service field. They work in jobs that, too, are dangerous and life-threatening. Many of our members receive injuries at work from lifting patients. These injuries are so serious that they often never return to the workforce. We represent public health staff and workers at long-term-care facilities who have to deal with SARS and legionnaires' disease. Our members have been infected with SARS and legionnaires'. This pension cap would apply to all these workers. It would mean that any increases are capped at the 1.4% accrual rate. This cap would not apply to the male-dominated occupations.

**1130**

Local 79 members, as I've said, work in dangerous jobs. In fact, I was just back in Seven Oaks on Monday. I met one of the women who worked there. She had in fact got legionnaires' disease. What she said to me was very interesting. She said, "I went through chemotherapy. Legionnaires' disease was worse."

The nurse who died from SARS was one of our members from Bridgepoint Hospital. Our members, as I've said, contract injuries, they pick up diseases that are life-threatening, but no one seems to be listening. They deserve the same treatment as everyone else. Just because it's not something that's perhaps as visible as immediate injury, they can't be ignored.

I just wanted to give you an example. A woman who is in CUPE and who is a member of OMERS, who works for 30 years and retires at age 65, with the current OMERS 1.325% accrual rate multiplied by her best five years at a \$30,000-a-year wage will get a pension of \$11,925 a year. The best that Bill 206 will allow is an accrual rate of 1.4%. Police and fire could have as much as 2.33% and many other public pension plans have a rate of 2%. At that 2% rate, that same woman would receive \$18,000 a year. For many pensioners, especially women, it is a \$6,000 difference, the difference between living in poverty and having some comfort later in life.

As I've said, women are already seriously disadvantaged financially when they retire from the workforce. Why would this government propose legislation that will only continue to perpetrate this disadvantage? Does this government not understand that pension plans hold out the greatest potential for preventing poverty of older women in the future?

I also wanted to talk about the fact that following second reading, a two-thirds majority on the sponsors corporation will be required to make decisions on benefit improvements and contribution rate adjustments. This will hamstring an already weak sponsors corporation and ensure that important decisions can never be made. The sponsors corporation will never allow increases, as it would mean that the employers would have to pay larger contributions.

There are more new flaws. A group representing senior municipal managers was given a seat on the employee side of the table on both the sponsors corporation and the administration corporation. Representatives from this group have traditionally sat on the employer's side of the table. Bill 206 will make OMERS unaccountable to the members. There will be 40 directors on two boards, with neither board nor an individual director held accountable to anyone. This is totally unacceptable to Local 79.

Pensions must be protected to guarantee the best outcome for all retirees regardless of where they work. The proposed legislation must allow for significant pension improvements for every group and must create a level playing field for all OMERS members. The appropriate sections of the proposed legislation must be altered. The principle of representation by population has not been applied to the administration corporation, where CUPE members remain seriously underrepresented. This must be amended. The new administration corporation must be accountable to the new sponsors corporation. This must be reflected in the legislation.

The sponsors corporation must be able to act in a democratic fashion and have a voting process that is not



so oppressive that the corporation is rendered dysfunctional. Normal voting rights must be restored. The original mediation-arbitration process must be restored to ensure 50-50 deadlock access to mediation-arbitration. The amendments that change the original process must be scrapped.

CUPE Local 79 strongly urges this committee, especially government members, to seize this opportunity. Take a leadership role in the struggle to help women overcome poverty, especially in their senior years. Amend the legislation to ensure that all workers who are contributors to the plan will always have meaningful input and that their financial interests will always be protected appropriately. Do not legislate poverty for a whole group of workers. If these amendments are not made, this seriously flawed piece of legislation must go back to the drawing board. The Ontario government will then have to start over and begin a broad collaboration process with the OMERS stakeholders to get it right.

Again I'll ask you, please do not ignore our largely female-dominated group. Thank you.

**The Chair:** You've left about a minute and a half for everybody to ask a question, beginning with Mr. Duguid.

**Mr. Duguid:** Just quickly, I want to thank you for a measured and helpful deputation. I listened carefully to your comments on the cap issue and would certainly appreciate an opportunity to maybe talk a little bit further with you about that in a little more detail. You've raised some good points there and I'd like to hear what you have to say on that—perhaps in the next few days, if that's possible. Maybe we could elaborate on that a little more.

I really don't have too much more to say. I guess I'm trying to figure out the structure of all the different stakeholders and how they relate. I'm looking at CUPE as an organization. You represent CUPE Toronto, more or less. Do you have an arrangement with CUPE Ontario in terms of ensuring that Toronto's voice is heard within any kind of representative structure on these committees? Have you had discussions with them about how you'd be represented?

**Ms. Dembinski:** In terms of the—

**Mr. Duguid:** On the sponsors committee or—

**Ms. Dembinski:** We have had discussions, and I will be very honest. I believe that Local 79 represents more members than anyone, and my position is that Local 79 needs to be there.

**Mr. Duguid:** So you think there should be independent recognition of Local 79, whether it be through CUPE recognizing it or whether it be in the legislation?

**Ms. Dembinski:** That would be great.

**Mr. Ouellette:** Thank you for your presentation. A quick question: Why do you believe that senior municipal managers were given a seat on the employee side and what do you believe the recommended breakdown for the membership on the board should then be?

**Ms. Dembinski:** I think basically they were put there to try to influence members, and I don't think they should be there. That's all I want to say. I will reiterate that I

think the crux of the issue is that you're treating predominantly female members differently. More so, when I even look around the room and I look at the deputations, it's primarily the largely male-dominated groups that are here.

**1140**

As I've said, I respect everything they do—I do; I've said that last time—but everyone seems to forget that our members don't have a choice. They can't abandon the residents, the patients, when they are in a dangerous situation. Nobody can. The ambulance drivers can't. The police can't. No one is recognizing that our members deserve the same treatment as everyone else. We seem to be drifting away from the fact that they are not being treated the same.

**Ms. Horwath:** I'm really glad that you clarified the issue about the accrual rates. I tried to get at that issue with the firefighters delegation, and again, all along, yourself, myself, everyone has acknowledged in this process that the Income Tax Act treats emergency workers differently, and nobody is denying that that's appropriate. Everybody agrees—and I think that the parliamentary assistant tries to bring this up as some wedge issue when it is not—that there is something that is acknowledged around those particular workers and their right to retire early and all of that.

The issue, though, is that if the government acknowledges that by removing caps on their ability to get to their 2.33%, which everyone supports, then similarly, fair treatment would mean that the cap of yours, that 1.4%, has to go, and you should be able to achieve the 2% that, under the Income Tax Act, is allowed. Does that reflect the issue that you're concerned around in terms of what we call discrimination in the way different workers are being treated under this bill as it sits?

**Ms. Dembinski:** Yes, that absolutely is the issue.

**Ms. Horwath:** Thank you.

**The Chair:** Thank you, ladies, for being here today. We appreciate your delegation.

## CITY OF GUELPH

**The Chair:** The next group we have before us is the city of Guelph. Good morning and welcome. Thank you for being here. I'm just going to wait till all of the hubbub behind you subsides a little bit and remind you that when you do begin, if you could introduce yourselves and the group that you speak for. After you've done the introductions, you'll have 15 minutes. Should you leave time at the end, there will be an opportunity for us to ask questions. We have your handout with us.

Could people sit down, or leave the room if you're going to have a chat, please? We're about to begin.

It's all yours.

**Ms. Kate Quarrie:** Good morning, Madam Chair and honourable members. My name is Kate Quarrie, and I'm the mayor for the city of Guelph. With me today is the city's chief administration officer, Larry Kotseff, and the city's director of human resources, Pauline Blais. On



behalf of the city of Guelph, we thank you for taking the time to consider our municipal concerns regarding Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act.

The city of Guelph is a rapidly growing community of approximately 120,000 people, located in the heart of southern Ontario, just about 100 kilometres west of Toronto. It is in one of Ontario's strongest economic regions. The province's Places to Grow draft growth plan has identified Guelph's downtown area as an urban growth centre and has forecasted its population to grow to approximately 200,000 persons by 2031.

While we acknowledge that the Ontario government has an interest in removing itself from the governance of OMERS, and while we may be supportive of OMERS' autonomy, the city of Guelph continues to have significant concerns with respect to the proposed Bill 206 in its present form. We are concerned that Bill 206 will have very serious negative implications on our city, our residents and businesses. The costs related to the proposed Bill 206 will have a dramatic effect on our ability to provide services in our community.

Ladies and gentlemen, please also take the time to reflect on the comments we raised in our previous written submission on November 21, 2005. It's attached as appendix A.

Today, we wish to focus on two very important issues for the city of Guelph: decision-making by the sponsors corporation and the financial impact.

In its current form, Bill 206 proposes decision-making which requires a two-thirds majority of the members of the sponsors corporation to effect any proposed changes in matters such as changes to benefits, including the supplemental plans, changes to contribution rates and changes to, or the establishment of, a reserve to stabilize contribution rates.

The bill further proposes that if a two-thirds majority is not achieved, the sponsors corporation through a simple majority can refer proposed changes to a process of mediation, and, failing mediation, can subsequently refer such matters to arbitration, again by way of a simple majority decision.

We do not believe that alternative decision-making mechanisms such as mediation-arbitration are required or advisable in resolving such important pension plan design and cost matters. We believe that since the second reading of Bill 206, the government has already introduced some key changes which greatly diminish the need for such matters to be referred to a process of mediation and arbitration.

The composition of the sponsors corporation has been improved to better represent all OMERS stakeholders. We are pleased to see that the government has recognized the importance of providing representation on the sponsors corporation for the very large group of non-union management employees who are OMERS plan members.

The most recent provisions of Bill 206 now require that supplemental plan options be developed for police,

fire and paramedic employees, thereby greatly diminishing, if not negating, this potential area of dispute among members of the sponsors corporation.

In light of the above, we believe a two-thirds majority decision-making process will ensure that the members of the sponsors corporation retain both the responsibility and the privilege of making final decisions regarding such significant issues for all OMERS stakeholders.

In keeping with our previous recommendation to you regarding the proposed decision-making process for OMERS plan changes and improvements, Guelph city council strongly recommends that these decisions rest with the sponsors corporation in accordance with the two-thirds majority currently proposed by Bill 206.

The financial impacts: We have yet to see evidence that the Ontario government has conducted a full risk analysis regarding the proposed changes to OMERS, nor has it sufficiently assessed the cost impact on members, employers and taxpayers. The changes proposed under Bill 206 will have substantial financial impact on the city of Guelph, resulting in costs of millions of dollars per year.

Our most current analysis of the cost of Bill 206 provisions related to supplemental plans suggests a potential increase of \$2.8 million annually which will need to be funded from the city of Guelph's tax-supported and user-pay budgets. Each increase of \$1.2 million in the city's budget results in a tax increase of 1%. This OMERS increase of \$2.8 million annually will result in an annual increase of 2% to 2.5% in taxes for the average residential household in Guelph.

If this cost is not passed on to the local taxpayer and if alternative funding is not provided by the government, the city of Guelph will ultimately be faced with the reduction or elimination of services to its citizens. Guelph city council recommends that the government conduct a significant review of the cost impact of Bill 206 on municipalities and that it share its findings with municipalities prior to proceeding with Bill 206 in its current form.

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In light of the above, the city of Guelph is requesting that the government of Ontario not proceed with Bill 206 in its current form. Also, as a member of the Association of Municipalities of Ontario and the Large Urban Mayors' Caucus, we endorse the submissions put forward to you by these associations regarding Bill 206 on our behalf.

In conclusion, financial, pension and governance matters are very complex and require a great deal more analysis prior to the Ontario government proceeding with Bill 206 in its present form. Guelph city council strongly urges the Ontario government to seriously reconsider the proposed changes to the Ontario municipal employees retirement system as reflected in this proposed bill and to support our recommendations made to you today.

I thank you for the time that you've taken. I understand my colleague Hazel was in here yesterday. I won't



end my comments the same way she did, but I have to agree with her sometimes. Thank you very much.

**The Chair:** Thank you. You've left about two minutes for each party to ask a question.

**Mr. Hardeman:** Thank you very much for your presentation. It's much appreciated. I would say that I'd be willing to admit that I always have to agree with Hazel.

**Ms. Quarrie:** I do, too.

**Mr. Hardeman:** It's not good news to not do that. I think it's particularly true yesterday. She made a very passionate presentation and came down to the final crux of the problem, which is that not enough work has been done. Obviously, from the hearings we've held so far, we've had groups from every direction coming in and saying that there are still problems with this piece of legislation. Some presenters had a different view than you, Madam Mayor, and came here saying that it would be better not to pass the bill than to pass it in its present form, recognizing that they are really looking for some of these changes to be made.

I think the big problem we have—first of all, you address the issue of cost, that the province should come forward with an analysis of what the impact will be to municipalities if this bill is passed in its present form. We've been asking the government if they have done some work on that, and to present the committee with the cost analysis they've done. They have so far been reluctant to do that. It turns out that the minister wrote—and I expect that you got the letter—on December 20, and said that this bill, if passed, would not increase any cost or pension benefits that would be detrimental to municipalities. So obviously he can't do a cost analysis if he has already committed to the fact that it's not going to have a cost impact. I guess we shouldn't hold our breath waiting for those comments to come forward.

Having said that, with all the presentations we've gotten from municipalities in particular, how would you explain that the minister would tell the heads of every council in this province that there will be no financial impact? Not that they disagree with your analysis of the financial impact, but that there will be no financial impact and no cost to municipalities if this bill is passed.

**Ms. Quarrie:** I don't want to get in the middle of party politics. That's one of the great things about being in municipal politics: I can work both sides of the fence here.

I would strongly suggest that if an analysis had been done that made the minister make that statement, then show us the material. AMO has asked for that material, as well as municipalities. All we're saying is, if we're wrong, show us where we're wrong. That's all we're asking. But it hasn't been forthcoming.

**The Chair:** Thank you. You're clearly a wise mayor.

**Ms. Quarrie:** I'm learning.

**Ms. Horwath:** Good afternoon. I wanted to know how you came up with your figures. What are some of the assumptions around your \$2.8 million annually?

**Ms. Quarrie:** We had our director of finance and Pauline Blais, who is director of human resources, work together. She could likely answer that in detail for you, or we would be very happy to supply the information to you, if that would save you some time. But if you would like her to answer, by all means.

**Ms. Horwath:** Sure, a quick answer would be great. We had another presentation yesterday where there was a discrepancy between how different parties are analyzing the numbers, so I would appreciate that.

**Ms. Pauline Blais:** I hope I can assist to some degree. All of the municipalities used a fairly similar approach, as advised by our treasurers and directors of finance. Essentially, we looked at the proposed potential improvements to the supplemental plan, whether or not it would be an increase in the accrual rate or whether or not there would be improved early retirement: rather than after 30 years, that it would be after 25 years. So we looked at those scenarios that would be the most plausible improvements that seemed to be outlined through the auspices of the bill. Using those costings, projecting—you have to project age and your numbers etc., so we were basing that on our current numbers of employees, assuming that they would still be around in those numbers. They were not inflated; they were projections based on current FTEs.

**Ms. Horwath:** And with all the potential benefits in at once?

**Ms. Blais:** Knowing that these would come in over a period of time. This also relates back to the decision-making process that is spoken about in the bill. So we did project all costs, knowing that over a short period of time, if the language of decision-making remains the same, it could be a fairly short period of time where all the improvements would be in place. So, yes.

**Mr. Lou Rinaldi (Northumberland):** Thank you very much, Your Worship, for being here today. We appreciate your submission in person. I'm going to share my time with Mr. Ruprecht here.

My question is specific to your cost analysis, to follow Ms. Horwath's question. I reviewed your written submission, and the cost seems to be basically the same; very little variance. One of the things we heard after first reading was the fact that the supplemental plans and the solvency issue create a huge burden. After second reading, we got a letter from the Minister of Finance to consider removing the solvency provisions so that the cost wouldn't be as great. I'm just wondering if you took that into account in your submission here today.

**Ms. Blais:** What we took into account is that the scope of Bill 206 does not address the issues of solvency, that that is another discussion by government, and that we can't assume that that promise would ever be implemented when it is not within the purview of this bill. Our key message here is that, based on the current provisions of this bill and our costing, it is going to be a burden on the municipality.

**Mr. Rinaldi:** Thank you.

**The Chair:** Mr. Ruprecht, you have about 30 seconds.



**Mr. Ruprecht:** I'm going to follow up on Ms. Horwath's question and my colleague's question here. You're actually indicating that the OMERS increase is supposed to be \$2.8 million, and that would also represent a tax increase, Ms. Quarrie, of 2% to 2.5%. Is this the—

**Ms. Quarrie:** This is on an annual basis.

**Mr. Ruprecht:** On an annual basis; that's right. Is this the worst-case scenario—I was listening very carefully to what your colleague said—or is this an estimated cost? I know you can't be totally specific and you can't be totally correct in this number, but I'm just wondering. It just seems a bit high, that one municipality like Guelph—

**Ms. Quarrie:** My understanding is that they went on very conservative numbers. Perhaps, Pauline, you could address that.

**Ms. Blais:** I think you had a range of many other municipalities speaking about a 3% increase. No, we held to fairly conservative projections based on looking at the eventual implementation of an increased accrual rate and increased improvements to the year where these employees would be able to retire with the new, improved supplemental plans.

**The Chair:** Mr. Ruprecht, your time has expired.

Thank you very much. We appreciate your being here.

#### DURHAM REGIONAL CUPE COUNCIL, RETIRED WORKERS' CHAPTER

**The Chair:** Our next delegation is the retired workers' chapter of the Durham Regional CUPE Council. Good morning and welcome.

**Mr. William Harford:** Good morning, Madam Chair.

**The Chair:** Are you Mr. Harford?

**Mr. Harford:** Yes. It's Harford; no "t." We got rid of that in Boston.

**The Chair:** Okay. Thank you. Welcome. If you could introduce yourself and the group you speak for for Harford when you begin. After that, you'll have 15 minutes. If you leave some time, there will be an opportunity for questions.

**Mr. Harford:** Thank you very much. My name is William John Harford. I am the acting president of the retired workers' chapter of Durham Regional CUPE Council. Thank you very much, Madam Chair and members of the committee, for the opportunity to speak this morning regarding Bill 206 and the way we grassroots retirees see it.

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I represent a group of retirees who get together three times a year to talk about issues that are of interest to us. I can tell you, they do not usually centre around politics or our pension, which, until recently, seemed to be relatively quiet. However, in recent months we have seen in the newspapers items regarding our OMERS pension and Bill 206. I can tell you, one thing retirees seem to zoom in on is something that may affect their pensions. So this matter did come up at our last meeting. After

much discussion, it was felt that we should let our views be known from a grassroots level.

We are ordinary workers from school boards and local municipalities in the region of Durham. We do not have all the technical jargon that I see from reading some of the other presentations, nor a detailed understanding of the proposed Bill 206, but we do understand what self-governance, retiree representation and a Canada pension plan cap mean.

For some 15 years or more we have heard the request for self-governance and how it would give us better control over our pension destiny. Over that span of time we had nearly reached the goal, only to have a provincial election called or a new minister put in the municipal affairs office. It seems that OMERS and its stakeholders are on the brink of achieving that goal. As retirees watching this development, we are becoming a little concerned. Under the current system, we have a retiree representative on the board selected from the Municipal Retirees Organization Ontario, more commonly known as MROO, who has voice and vote.

This well-structured, non-partisan organization has served our members and other retirees well over the years by bringing retirees' pension concerns to the ears of other OMERS board members. This has resulted in positive improvements to our OMERS pension plan, not just for retirees but for retirees in the future. Our retirees chapter, most of whom are members of MROO, have recognized this organization as our voice at the OMERS board table. Its representatives, both on the OMERS board and in its organization, have always been well informed, knowledgeable and sensitive to the retirees' welfare, a voice for OMERS' inactive members, better known as retirees.

It is our understanding that Bill 206 is changing the structure of OMERS to have an administrative corporation and a sponsors corporation. We are pleased to see that each corporation will have a retiree. It is further understood that this retiree would not necessarily come from MROO, as is the current practice. In fact, it seems that even someone from our small chapter could become a retiree representative on the board. It is our belief that all-inclusiveness would not serve retirees well. A small organization such as ours would not have the expertise or a more global understanding and contacts with other retiree groups throughout the province or even beyond Ontario. Therefore, our chapter recommends MROO to be our voice and the common voice of all NRA 65 OMERS retirees. MROO has had a successful track record over the past 23 years to achieve improvements to the OMERS plan for both retired members and future members. MROO is a well-founded organization with eight zones throughout the province. It communicates with its members annually at zone meetings and with quarterly newsletters. I know our retiree group looks forward to both the zone meetings and the letters to keep them informed on matters that most affect retirees.

Upon request, MROO has sent speakers to the Durham chapter's meetings. MROO has the respect of the current OMERS retirees and the executive board of



OMERS. MROO, over its history, always put forward good, strong, informed, knowledgeable representatives who understand the need to improve the OMERS plan for current retirees and future retirees. As noted above in the reference to NRA 65, we would suggest, for the same reason that MROO has been able to represent us successfully, that the committee should consider increasing the number of retirees from one to two, with one being an NRA 65 and one an NRA 60.

As demonstrated, there have been improvements made to the OMERS plans. These changes have been brought about by experience in the field of being retired, and those experiences being told to the executive board, resulting in improvements to the OMERS plan. These same experiences will be had by the NRA 60s, especially with the expansion of the emergency and health sector to include paramedics. A representation by a person from the NRA 60 can best express the on-the-ground situation that those retirees are having.

The retired workers' chapter of Durham region recommends MROO to be the voice of the OMERS retirees. We further recommend that the legislation have this written into it to ensure that MROO always has continuous representation on the two corporation boards. This is what we understand to be self-governance and representation.

With regards to the CPP cap that is in the current Bill 206, this cap is a travesty and an insult to OMERS board members and the staff. To place this kind of restriction in the legislation would be a major setback for retirees and for the purpose of self-governance. For over 15 years we have worked to get self-governance, and one of the features would be to expedite changes to the OMERS pension plan without having to go through the political loops of the Ministry of Municipal Affairs. Had it not been for the delays caused by the current system, we could have achieved the Canada pension offset of 0.6%, and today may have reached parity with the hospital workers' pension plan, HOOPP, or the teachers' sector pension plan. OMERS, in our opinion, have always operated in a prudent, diligent and fiscally responsible manner to ensure the plan's security.

This cap seems to fly in the face of those at OMERS, that if they were given self-governance, they would irresponsibly run off and lower the Canada pension cap from its current 0.675% to maybe 0.4%. This won't happen. I and our members have faith in the OMERS board to use due diligence, to only make those kinds of changes when it is in the best interests of the plan's security and its OMERS members. Yes, we would like this cap to be lowered. We would most certainly like to see parity with the hospital workers' pension plan, HOOPP, or the teachers' sector pension. We also know and respect the fact that OMERS cannot do that unless there are enough funds to do so. A Canada pension cap reduction is the only way retirees can actually gain more money in their pocket. This is especially helpful for those among retirees who have a low pension income. I might add that a good number in this category are women.

In summary, I hope I have been able to give some idea how we retirees at the grassroots see the proposed legislation and how we would like to see it changed to reflect our needs. We will be depending on other advocates to finesse the details of the proposed legislation, but I do hope your committee, Madam Chair, will have the proposed legislation changed to meet the concerns contained in this presentation. I thank you very much for taking the time to listen.

**The Chair:** Thank you. You've left about two minutes for each party to ask questions, beginning with Ms. Horwath.

**Ms. Horwath:** I'm glad you've raised the issue of the cap, because it seems to be one of the issues that is raised to demonstrate how the bill in its current form discriminates against certain numbers of workers.

I was interested to receive a document today and wanted to read a piece of it. This is from the firefighters. It says, "Currently, Bill 206 allows the sponsors corporation the ability to negotiate an accrual rate from its current level of 1.35% to 1.4% or a 0.6% CPP offset. CUPE, fire, police and even the current OMERS board have recommended that this cap be removed and are continuing to recommend this change prior to third reading." Would that be your position as well, based on your presentation today?

**Mr. Harford:** Speaking on behalf of the retirees I represent in my little area, one of the things we had always looked forward to was a reduction in the CPP cap. It is the only way that current retirees can see a little more money come into their pocket. The other thing is that for over 15 years we've been arguing for self-governance in order to make these kinds of corrections. Unfortunately, we ended up being frozen. The other thing is that every time we'd get close to it, we'd have a change in government and we'd have to start all over again. I can tell you, some of the people who started out on this journey 15 years ago aren't here today. So I'm hoping that the government will listen.

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They have to have faith in that board. OMERS isn't some kind of Mickey Mouse organization, as you well know. We're talking about a \$30-billion operation, and these people are responsible. You can bet your bottom dollar that they're not going to give us something if we can't afford it. So it should be removed, that 0.6%.

**Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell):** Mr. Harford, I want to thank you for taking the time to come up and address the committee. You've probably clarified some of the concerns that you have today.

I'd just like to know: You say that MROO is your voice. They represent the retiring people. Have you read this letter that was sent out to all the people from MROO? And also the newspaper ads?

**Mr. Harford:** Yes, sir, because that letter was sent to all MROO members. So, yes, I had read it, and not only that, but I'd also read the paper items on Bill 206. To be quite honest with you, one of the questions I had put back



to MROO as a member out there in la-la land was, "What are we doing in MROO? Why aren't you giving us some direction as retirees?" I can tell you, sir, that once we leave our workplace, either as a union member, where I was very active, or as an employee of an employment group, the door closes and the retiree has no more voice. The only voice that has consistently brought issues forward for retirees has been MROO. It's a well-organized group formed by people who are, like myself, retirees who have come together and have studied the legislation, whether it be with the province or with the federal, and have tried to give some guidance and leadership to try and make improvements for retirees.

**Mr. Lalonde:** Have you had any meetings since last November's public hearing that we had?

**Mr. Harford:** With the province?

**Mr. Lalonde:** No, with MROO.

**Mr. Harford:** No. MROO has not called any meetings. We'll have one in April, I suspect, in our zone.

**Mr. Lalonde:** Because we feel that the content of the letter was misinforming the MROO members, and it's also been confirmed. The people have been calling me. They were really concerned when they received this letter, and also reading the newspaper ad, because at the present time, definitely no retiree members will be affected by Bill 206.

**The Chair:** Thank you, Mr. Lalonde.

I'm going to give you an opportunity to respond.

**Mr. Harford:** I guess one of the things that could happen, as we've heard from some of the presentations, is if the taxes go up, that definitely hits retirees, a number of whom are on fixed wages. The main issue, I believe, from MROO, is that what our retirees were looking at is the fact that the 0.6% cap was going to be written into legislation, and if it is written into legislation and we ever wanted to try to correct that, if it took 15 years to try to get self-governance, it might take another 30 years to try to get that cap reduced to something that's more suitable in the future, providing the funds provide.

**Mr. Ouellette:** Thank you for your presentation. It's somewhat different from a lot of the ones we've heard in that it appears that you support the legislation, except that you would like us to ensure that MROO represents and has your voice there.

The other aspect is that the change that you're looking for is an additional seat for the NRA 60s and 65s. Do you feel that the board makeup, then, is best represented in that fashion only?

**Mr. Harford:** I'm not totally familiar with the whole composite of the proposed board, but I would like to say that one of the reasons why I think that it would be a good idea to have a retiree from the NRA 60 as well as NRA 65, which I understand will be there, is that, unfortunately, working people don't have the chance to tell you what's going to happen when they're retired. Fortunately, with OMERS, we've had the opportunity of a debriefing of working people who have become retired. It's from that debriefing of those retirees back through MROO that we've been able to effect positive changes in

the OMERS pension plan. Does that answer your question?

**Mr. Ouellette:** CUPE 79 had mentioned that they actually thought it would be good if they had representation by their organization on the board, and from that, I gathered that the various disciplines within CUPE would be seeking representation. What I'm hearing from you is that you feel that there could be potential growth in that single organization, such as MROO would best represent your interests.

**Mr. Harford:** Yes, certainly MROO does represent retirees because, as I said, there's nobody who speaks on behalf of retirees once you retire. There is no voice. Not even our unions really speak to it in an effective way, because CUPE members are working members, and we're the ones who are retired and know what has happened. Certainly, that has been my experience. When we have effected changes, it was because of retired members who said, "Holy smokes. Do you know what? I'm retired but I don't have this or that"—things where we tried to effect change.

With regard to Local 79, I can certainly understand why they think they should have representation, being one of the largest. I'll leave that up to the union to decide how they want to do that. CUPE's a big umbrella.

**The Chair:** Thank you, Mr. Harford. We appreciate you being here today.

## REGIONAL MUNICIPALITY OF NIAGARA

**The Chair:** Our next delegation is the regional municipality of Niagara. Good morning and welcome. Actually, I guess it's good afternoon—good afternoon and welcome. Thank you for being here. Once you get yourself settled, if you could introduce yourselves for Hansard and the group that you speak for. After you've begun, you'll have 15 minutes. If you leave time at the end, there will be an opportunity for questions.

**Mr. Peter Partington:** Thank you. Chair Jeffrey and committee members, my name is Peter Partington and I'm the chairman of the regional municipality of Niagara. With me is John Nicol, the region's commissioner of human resources.

Niagara region is a great place to live in and visit, encompassing 12 municipalities across 1,800 square kilometres. We're home to 425,000 citizens. Our tourism industry attracts over 15 million visitors a year. We're critical to the socio-economic well-being of the province and the country. We, like a number of other regions and municipalities in Ontario, do, however, have significant challenges, including the responsibility for providing ever-growing and costly public health, emergency and social services and transportation needs within a very restrictive stream of revenue: the property tax system.

Notwithstanding the commonality of services provided across the major municipalities of Ontario and the funding concerns, we in Niagara differ significantly from a number of municipalities in Ontario and particularly the Golden Horseshoe as to our economy and our ability to



pay for ever-increasing municipal service costs. Our manufacturing sector is predominantly branch plant oriented. We have a sizable tourism and hospitality sector, significant agricultural and greenhouse production, and development in telecommunications and call centres.

Most of these sectors of the economy are struggling. For example, tourism has been set back by 9/11, SARS and the appreciation of the Canadian dollar. Manufacturing is the most significant contributor to the GDP in Niagara; however, manufacturing jobs are on the decline. Our unadjusted unemployment rate on average for 2005 was 7%, compared to a provincial average of 6.6%. With a higher share of provincial citizens 65 years and older residing in Niagara, government transfer payments account for a larger share of personal income in the region compared to elsewhere. Lower average earned income associated with our economic profile and a higher share of seniors in the overall population contribute to the region's lower-than-average household incomes and high out-migration of our youth. For example, according to 2003 Statistics Canada data, Niagara had a median family total income of \$63,800, compared to \$98,700 in Oakville and \$86,900 in Burlington, which are communities within an hour's drive of our headquarters. Our median family total income was the lowest of the 11 Ontario municipalities reported by Statistics Canada and compares to a provincial median income of \$67,500.

According to the 2005 BMA Management Consulting municipal study, nine of 12 single-tier municipalities in Niagara had a higher ranking as to total municipal tax burden as a percentage of income available on an average household. No Niagara municipality had a low ranking as to municipal tax burden, while other municipalities within a 100-kilometre radius did have a low ranking—communities such as Burlington, Cambridge, Guelph, Oakville and Waterloo.

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As a consequence, property taxes represent a greater percentage of disposable income in Niagara than in many other Ontario municipalities. Additional costs associated with the supplemental benefit, as proposed under Bill 206, will further the economic hardship already faced by our local taxpayers. We in Niagara do not have the same assessment base or ability to raise revenues for needed infrastructure investments as do many other municipalities. New greenbelt legislation has further added economic revenue generation challenges for a number of municipalities in Niagara and has accentuated our concern as to our ability to pay for municipal services.

OMERS pension contribution rate increases recently authorized by the provincial government already represent an additional \$1.78 million, or plus-10% in 2006 pension contribution costs for our regional municipality compared to 2005. We estimate that the proposed supplemental pension benefit alone for police, sworn and civilian personnel, as well as paramedics, could represent an additional \$4.7 million, or a 1.9% increase to our municipal levy for the region.

Mandated consideration of supplemental pension benefits prescribed under Bill 206, representing additional and costly pension plan benefits for police, fire, paramedics and sworn and civilian personnel, are not affordable in Niagara, given numerous other local service demands, infrastructure, transportation needs and costs. When introducing Bill 206 in the Legislature for second reading on December 12, 2005, the Minister of Municipal Affairs and Housing, as well as his parliamentary assistant, noted that municipalities will have control over supplemental benefits through negotiations with their respective bargaining units. In fact, in his letter to me of December 20, 2005, Mr. Gerretsen confirmed that once the supplemental benefit plan is made available, it will be up to local groups of employees and employers to decide whether or not they wish to access a new pension benefit.

We respectfully disagree with the minister and his parliamentary assistant, as the Police Services Act, the Fire Protection and Prevention Act and the Ambulance Services Collective Bargaining Act all require that any issue raised at negotiations leading to impasse must be decided by an arbitrator. This means that municipalities could lose the right to decide on the proposed supplemental benefit, should they reach impasse during collective bargaining. We strongly disagree that a third party should have the authority to decide such an expensive, complex and precedent-setting benefit for municipalities in Ontario. We believe it is all too easy for the associations to request supplemental pension benefits at collective bargaining and to bring the entire collective bargaining process to an impasse, requiring an outside arbitrator to decide this and any other issue remaining in dispute through the collective bargaining process.

I will now request our commissioner of human resources, Mr. John Nicol, to further explain why we believe the proposed legislation should exempt the authority of arbitrators to address supplemental benefits for emergency worker services.

**Mr. John Nicol:** Historically, there has been insufficient regard by interest arbitrators as to differences across municipalities pertaining to the ability to pay for municipal workers who are subject to mandatory interest arbitration following an impasse at collective bargaining. Notwithstanding specific language in the Police Services Act, the Fire Protection and Prevention Act and the Ambulance Services Collective Bargaining Act requiring arbitrators to consider the employer's ability to pay, arbitrators have awarded emergency service workers compensation improvements which are causing significant budgetary hardship for local taxpayers. As there is little emphasis given by arbitrators as to a municipality's ability to pay, we find there are very similar salaries paid to police personnel right across Ontario, as well as fire and paramedic personnel, for their particular occupational group.

As an example, as of December 2005, a first-class constable in Toronto received an annual base salary of \$69,361. That compares to \$69,293 in Peel, \$69,282 in



Halton, \$69,194 in Hamilton and \$69,097 in Niagara. Notwithstanding the considerable differences between Toronto and Niagara as to cost of living, service demands and ability to pay, the gross salary difference in pay between the two forces is only \$264 per year.

As noted in his arbitration award of October 5, 2004, concerning the determination of salary adjustments at Ottawa Police Service, William Kaplan stated, "I have been guided by the criteria normally considered and applied by interest arbitrators, most notably replication and comparability, particularly and historically with the big 12." The "big 12" refers to the province's largest municipal police forces and underscores the similarity of salaries and benefits across the 12 police services, notwithstanding differences as to ability to pay across these communities.

As well, the comparable, if not identical, annual percentage base wage improvement awarded to sworn officers is also awarded to civilian employees in these same services. For example, in the Brockville Police Service award of March 10, 2005, Richard McLaren noted, "This award recognizes the fact that historically there has not been a differentiation in wage settlements between the uniform and civilian agreements of this board."

As Bill 206 allows supplemental benefits for civilians in the emergency service sector, it is very likely that associations will request arbitrators to grant supplemental benefits to not only sworn officers but also civilian staff, who in many cases undertake similar work to municipal employees. This could add further cost for local governments and supplemental pension demands from other non-emergency sector municipal workers.

Fire associations have also effectively and successfully linked police settlements to their salary improvements in both negotiations and arbitrations. For example, the Mitchnick award concerning the town of Markham in March 2005 awarded a three-year salary improvement, "to match the general increases settled on in York both as to timing and amount" for York police services. The result in annual salary differential between a first-class constable and a first-class firefighter at York is only \$40 per year.

To date, fire associations have been less successful in bargaining retention pay commonly found in police contracts. However, they are proceeding to some 12 municipal interest arbitrations in an attempt to be awarded that benefit. Retention pay has considerable salary benefit and pension cost ramifications for municipalities of Ontario.

Arbitrators in the emergency workers sector have tended toward annual compensation improvements which exceed other municipal workers. In his award of June 2005 concerning the region of Peel paramedic arbitration, Kevin Burkett rejected "the employer's attempt to tie the wage increase to normative municipal sector wage increases." He awarded improvements of 20.3% over three years, which is an average of 6.77% per year.

Personnel costs associated with emergency services—that is, police, fire and paramedics—are consuming an

ever-increasing proportion of our municipal budgets and constraining the ability of municipalities to fund other necessary programs. Salary and benefits-related costs represent 86.8% of the net Niagara Regional Police Service operating budget in 2005. This large percentage of personnel costs to total operating budget is not unique to Niagara, as other police services have a similar percentage of salary and related benefits to net operating budget. Supplemental benefits for union and civilian personnel will add to our challenge across Ontario to control ever-increasing emergency services.

In conclusion, municipalities cannot afford supplemental pension benefits for police, fire and paramedics. Local councils do not have control over this costly benefit for purposes of emergency service workers who have recourse to mandatory interest arbitration. We have witnessed that specific legislation requiring arbitrators to give consideration to ability to pay or government intent in the absence of such specific legislation is not sufficient.

A good example is the Goodfellow arbitration award of December 17, 2004, concerning the issue of Ontario health premiums between the city of Hamilton and the Hamilton Professional Fire Fighters Association: "As for the question of the government's intent ... as expressed, for example, on at least one occasion in the Legislature (i.e., that the cost of the premium would not be covered by existing collective agreement language), it is, quite simply, irrelevant to the issue before me."

#### 1230

Supplemental benefits for emergency workers will encourage early retirement of experienced and skilled emergency worker personnel, which in turn will lead to ever-more-difficult and costly recruitment competitions amongst municipalities for limited skilled resources. The supplemental benefit itself will be of significant cost to our benefit budgets.

We are not alone in our concerns. The Conference Board of Canada has confirmed, through their survey research of September 2005, that funding of existing pension plans and the question of a pension plan underfunding crisis in Canada is real for governments, plan sponsors and concerned Canadians. If the municipal pension plan amendment is to go forward, we ask that Bill 206 be amended to exempt the authority of arbitrators concerning supplemental benefits. To do otherwise is to remove control from local government and its employees, which is contrary to the Minister of Municipal Affairs and Housing, who stated in the House on December 12, 2005, "This puts the supplemental benefits in the control of local governments, which would bargain with their workers." To allow a third party arbitrator to decide such a benefit is to take control from local governments and is contrary to the intent of the bill as expressed by the Minister of Municipal Affairs and Housing and his parliamentary assistant. The latter stated in the House on second reading of Bill 206 on December 12 that, once supplemental benefits are set up, "It would then be left up to the local groups of employees and



employers to decide if they wish to access this new pension benefit.” He also emphasized to the House, “These reforms return the decision-making function to our democratically elected local representatives and their constituents.”

If we are to return the supplemental benefit decision-making function to local municipalities, the provincial government must ensure that arbitrators do not have the authority to address supplemental benefit issues arising from the collective bargaining process. Thank you very much.

**The Chair:** You’ve left exactly no time. You just used your whole 15 minutes. Thank you very much for your very thoughtful presentation. We appreciate you being here today.

### INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 636

**The Chair:** Our next delegation is the International Brotherhood of Electrical Workers. Good afternoon and welcome.

**Mr. Patrick Vlanich:** Good afternoon. How are you today?

**The Chair:** I’m good. How are you?

**Mr. Vlanich:** Very well, thank you.

**The Chair:** After you’ve had a chance to get yourself organized, if you could introduce yourselves and the organization you speak for, so Hansard can record it. When you begin, you will have 15 minutes. Should you use all that time, there won’t be an opportunity to ask questions. If you do leave some time, we will be able to ask about your presentation.

**Mr. Vlanich:** Good afternoon, everyone. My name is Patrick Vlanich. I’m a union education officer and contributing member of OMERS. I am joined today by Rick Wacheski, the business manager and financial secretary of IBEW, Local 636. On behalf of Local 636 of the International Brotherhood of Electrical Workers and our members, I would like to thank you all for this opportunity to appear before you today and share our supplemental comments and recommendations on Bill 206.

It was Yogi Berra who once said, “When you come to a fork in the road, take it.” OMERS now finds itself at this junction, and it will be left to you to have the daunting task to choose its path.

In the court of public opinion, there is never any shortage of judges, and the introduction of this bill in June 2005 certainly proved this adage true. Over the past six months, this legislation has been under intense scrutiny by both those who support its passage and those who oppose it. Ironically, rather than promoting unity among the stakeholders, this bill has created serious wounds that must be healed to ensure that all parties can get back to the very good work of delivering on the pension promise to the families across Ontario. Hopefully, by adopting the key changes today presented

before you, most significantly the elimination of caps on benefits, the healing process can now begin.

Passions have often run high on both sides in this case, occasionally resulting in the release of information—or perhaps misinformation, depending on your point of view—that has made good headlines, but not necessarily good sense. It is unfortunate that this has now overshadowed the true focus of this bill and the work of this committee. No doubt there will be escalating campaigns in the days and weeks ahead. We urge you to not be swayed by the rhetoric and remain focused on the reality that the time is now for OMERS autonomy.

While only a handful of our earlier recommendations were adopted, our members appreciate the efforts made thus far by the committee and the government to address the many varied concerns brought forward by a very diverse group of interested stakeholders. As we all know, no bill can possibly be all things to all people, and obviously there’s much work to be done if we are to meet the greater good of all stakeholders. We encourage you to continue in this pursuit.

Today the IBEW reaffirms our belief that, with some further amendment, Bill 206 would in fact be good for OMERS, good for our members and good for the future. In reviewing the bill, as amended for second reading, we have identified several areas of concern, the details of which are outlined in our written submission. Rather than revisiting the recommendations and comments included in the earlier submission tabled in November, we have chosen to focus our attention on these issues. OMERS must be put on a level playing field with other major public sector pension plans in Ontario. To this end, the IBEW is respectfully requesting reconsideration for the sections of Bill 206 dealing with defined benefits, supplemental plans, the CPP offset, start-up funding and transitional matters.

Let me begin with defined benefits. In the original draft, section 9 of Bill 206 read, “Every OMERS pension plan must be a defined benefit plan.” To our surprise and disappointment, this section has been removed. For many of our members, defined benefits define OMERS. Since its inception more than 40 years ago, OMERS has been a defined benefit plan and, simply put, we believe that it should remain so for the next 40 years. With this in mind, the IBEW recommends that section 9 should be reinstated within Bill 206, as previously written.

Although I’m somewhat reluctant to talk about supplemental plans, given the other presenters today, I will touch on that briefly. Despite the passage of Bill 211, which ends mandatory retirement at age 65, a steadily growing number of our members are continuing to seek ways to retire early. That is why we encourage this committee to include language that enables pension plan members other than police, fire and paramedics to establish supplemental plans. We support the establishment of two independent supplemental plans, one for police, fire and paramedics and one for all other members, respectively, each guaranteeing a minimum threshold of negotiable improvements and each governed



by a sponsor/advisory committee that includes equal representation from employees and employers.

Next we'll deal with the question of the CPP offset. Presently, the Canada pension plan offset is 0.675%. This effectively reduces the pension benefits for OMERS retirees at age 65 to a degree higher than those in other public sector plans such as the hospitals of Ontario or the Ontario teachers. Admittedly, the legislation has lowered the ceiling by reducing the offset to 0.6%. However, meaningful independence for OMERS should allow the sponsors committee to determine what the plan can comfortably afford and balance that against the expectations of the members who want to enjoy the maximum benefits available. To this end, the IBEW recommends that paragraph 12(1)2 be deleted.

Another issue that is a carry-over from our earlier submission is start-up funding. Obviously, an undertaking of the scope and magnitude anticipated following passage of this legislation, should it occur, will inevitably result in significant start-up costs. Estimates range anywhere from \$3 million to \$5 million. Those could be conservative or perhaps lofty, depending on who you are. Nevertheless, legislative restrictions may prevent some or all of these sponsor costs from being charged to or recovered from the primary plan. In turn, such costs may be passed on to the members and the employers. From our perspective, that's patently unfair. When the OPSEU pension plan was established and the teachers' pension plan was devolved from government, funding was provided. Therefore, we recommend that the government provide adequate start-up funding for any and all costs incurred during the transition that cannot legally be recovered from the primary plan.

Turning our attention to transitional issues, the IBEW agrees with the decision to give voting rights to a representative for retirees on both the sponsors and administration corporations. However, we are quite perplexed as to why the representative chosen by the Association of Municipal Managers, Clerks and Treasurers of Ontario has been given a seat on what has traditionally been regarded as the employee side of the table—not that we are to discuss partisan approaches to composition, but the reality is that quite often the manager and employer are one and the same. However well-intentioned, the assignment of a representative from the management group to the plan members group in both the administration corporation and the sponsors corporation seriously skews the equal representation envisaged by the legislation. On an organizational level, this group may be regarded as employees, and in the eyes of OMERS they may be classified as members. We respectfully submit that, practically speaking, this is where the similarities end between this group and the others represented in the members group.

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We find it difficult to imagine that the people in this association share many common interests with the working people in their employ. They seldom do at the bargaining table or when we're engaged in a grievance

meeting. In order to maintain balance in the sponsors corporation, the IBEW recommends that paragraph 39(1)10 be amended to provide for three persons to represent "other members" of the OMERS pension plan and further amended to ensure that the person chosen to represent the Association of Municipal Managers, Clerks and Treasurers of Ontario be included in the 11 employer representatives.

Likewise, in order to maintain balance in the administration corporation, the IBEW recommends that paragraph 45(1)7.1 be amended to ensure that the person chosen to represent the Association of Municipal Managers, Clerks and Treasurers of Ontario is again included in the employer representatives, which in this case would be eight—a slight change from the legislation.

Turning now to the advisory committee: As we understand it, the bill establishes advisory committees "for the purpose of advising the sponsors corporation about benefits for OMERS pension plan members." What we don't understand is why the legislation directs that these committees will be "discontinued when the sponsors corporation passes the first bylaw under subsection 23(1)." We think the advisory committee will serve an important role. Therefore, the IBEW recommends that subsections 40(3) and 41(3) respectively be deleted to ensure that, once established, the advisory committee shall continue to advise the sponsors corporation about benefits for the respective OMERS plan members.

The debate surrounding the issue of OMERS self-governance has gone on far too long. We appreciate the efforts of this committee and the government to bring closure to the often heated and sometimes acrimonious exchanges between competing interests over this bill. The IBEW believes that pension plan independence should not be a privilege but a right. OMERS, its members, employers and retirees have earned that right. The proclamation of Bill 206 will confirm that this government agrees.

We urge you to adopt the recommendations that the IBEW has put forward and finally establish a governance model that empowers the stakeholders, provides retirement benefit security for current and future generations and ensures that OMERS can remain true to its pension promise.

In closing, I'll leave you with the words of Dwight D. Eisenhower, who said, "Neither a wise man nor a brave man lies down on the tracks of history to wait for the train of the future to run over him." I ask you to be brave and to be wise during your upcoming deliberations and make choices that are good for the people of Ontario and the people in OMERS. Thank you again for your time and attention.

**The Chair:** Thank you. You've left about a minute and a half for each party, beginning with Mr. Rinaldi.

**Mr. Rinaldi:** Thank you very much for your presentation. You folks certainly put a lot of effort into it. You made some interesting recommendations in your first submission and this submission. I don't really have a lot of questions—just to commend you on the work that



you people have done toward trying to achieve this and move on.

We've heard during deliberations both yesterday and today that we should throw it away and start all over again. I think that's what they've been doing for the last 15 years. We certainly need to move on, so I thank you for that recommendation.

**Mr. Vlanich:** Thank you.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. Through the whole hearing process—and we're getting near the end of it—we've been hearing a lot of concerns from all parties involved. Yours are slightly different, because you have not really spoken to the supplementary plans, as opposed to the overall plan and the devolution of the plan. When we started on the process, it was because the minister said there was a need to devolve the plan; to put it, as other pensions are, into the responsibility of employers and employees. Through the whole process we've kind of lost that purpose, because we've had all our debates and all our discussions about supplementary plans and the positive and the negative.

I was interested in the comments about the management members of the plan who are going to get a seat on the board and your concern that they would not necessarily be on the same side, that they should be on the opposite side; that they shouldn't be on the labour side but should be on the management side of the table. Is it not true that the interest of anyone that's a member of the plan would be a solidly run plan that would guarantee the benefits in their retirement years? Would that not be the same for the lowest-paid person on the scale and the highest-paid person on the scale? Wouldn't the objective of the person on the board be a solid pension plan, as opposed to the management side just wanting to save premium costs?

**Mr. Vlanich:** In a perfect world I would suggest that that is true, and in principle I would hope that that's the practice of the persons appointed or selected for any committee or even the current OMERS board. Practically speaking, however, the structure currently is six employers and six members. That traditionally has been regarded as employer and employee, much akin to the current collective bargaining process. I'm very confident that the representation provided by both sides is kind of "hang your guns at the doors" right now, and you do work toward the common interest of the plan.

I guess the concerns we would have is that it has never been an issue before because the people on each side of the discussion and the representative groups in each particular camp were always of the same mindset. Theoretically, as we've indicated, I would hope that they'll all work toward the same goal. But if it comes to a question of finance—we've heard a lot about that from municipalities and other employers across the province—I don't know if it would be that easy to separate yourself from your role as an employer and that of an employee group.

**Ms. Horwath:** Welcome. At the end of your presentation, you're saying that the proclamation of Bill 206 is where you want to go. However, there are several items you've raised, and they're common with other employee groups: the super-majority requirement that's been added, the municipal managers being on the employees side that Mr. Hardeman raised, and the cap on accrual rates. Those are three of the biggies. If those are not addressed in final amendments to the bill, do you still want to see the bill going forward? Do you have any dealbreakers?

**Mr. Vlanich:** I would suggest that there are dealbreakers. Like any set of negotiations, there is a degree of compromise that lends credibility to the process and leads to resolution. I believe that some of the concerns raised and those shared—or even different concerns between the different groups are very legitimate. I think that the focus and intent, as was raised by an earlier member of your committee, was to provide empowerment to the people in the group. It would be difficult to transfer that power and authority over a plan when the people within that group are still somewhat at odds with respect to what should be in there.

When we refer to the proclamation, we are hoping that since this in a pre-legislative state, by the time the final draft comes about, it does take into consideration the key areas of the bill. Admittedly, perhaps not everything that everybody wants will be in there, but some transcend political lines or partisan lines. We certainly can't promote or condone systemic discrimination. We certainly can't prohibit certain groups within the plan from enjoying the full benefits and entitlements of it. We hope that it would be provided through a proclamation because it has been a long time. To go back to square one would be unfortunate for everybody, but I think we also have to recognize that these are not fabricated. These are very real issues to very real people.

**The Chair:** Thank you very much for your delegation.

#### CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 2316

**The Chair:** Our next delegation on your agenda is indicated as Valarie Hartling. It's actually Aubrey Gonsalves. Are you speaking for the Canadian Union of Public Employees, Local 2316? Is that right?

**Mr. Aubrey Gonsalves:** That is correct.

**The Chair:** Great. Welcome. Get yourself settled. When you begin, could you introduce yourself and the group that you speak for, so we have a record for Hansard. After you do begin, you'll have 15 minutes. If you leave some time at the end, we'll be able to ask you some questions. I'll give you a one-minute warning if you're worried.

**Mr. Gonsalves:** Thank you very much. Good afternoon. My name is Aubrey Gonsalves. I'm the chief steward of CUPE Local 2316, which represents 700 full-time and part-time workers at the Children's Aid Society



of Toronto. To my right is Antoni Shelton, CUPE Ontario executive assistant to the president.

I want you to understand very clearly how important this issue is to my membership. In 2004, our membership held not one but two emergency membership meetings. These meetings were called for by the membership, not by the executive, because they had very serious concerns about OMERS and they wanted to discuss them. They were concerned about how OMERS was investing our money and how OMERS was governed.

One of the actions that the members voted to take at those meetings was to send a petition to the Legislative Assembly of Ontario calling for joint trusteeship of the OMERS pension plan and an independent audit of the Borealis fiasco. Since that time we have participated in demonstrations and a postcard campaign, and have contributed our dues money to the CUPE court case concerning Borealis. We have also called our MPPs, demanding changes to Bill 206. I believe that these ongoing actions demonstrate a sincere interest in our pension plan. I can tell you very clearly that the changes the government is proposing fall far short of addressing my membership's concerns.

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The proposed governance structure does not allow for genuine joint trusteeship, nor does it provide any protection from another Borealis-type money grab from our pensions. We need a governance structure that provides for representation by population, a governance structure that ensures that workers are equal partners in the management of the plan, and a governance structure that is accountable to the investors in that plan.

As workers, we are the investors. Pensions are deferred income. It's our money that we all work extremely hard to earn. We deserve a real say in how our money is invested and its delivery in the form of pensions. The money does not belong to our employers, nor does it belong to the government. It belongs to us and we must have effective input on how OMERS meets its obligation of translating our money into our pensions. My members, who are all voters, do not expect anything less.

When OMERS was first introduced, all members were subject to the same rules. All members were provided with the same basic benefits and all members had the same opportunity to develop supplementary plans and avail themselves of these plans. However, Bill 206 proposes to change that, with some members benefiting more than others. That is not right, nor is it just.

When our members retire, we are all charged the same for our electricity, our housing and our food. The local grocery store is not going to charge my retired members less than a retired firefighter or police officer because you, the government, discriminated against us in the OMERS pension plan and therefore we have considerably lower pensions. We all have the same basic needs. We all deserve the right to develop supplementary plans. We all deserve a pension that will allow us to meet

our needs and live with some financial peace of mind. Bill 206 must be changed in order to ensure this happens.

Furthermore, under section 12 of the bill, the lower-paid members of the plan, who are primarily women, will be stuck with an effective accrual rate of 1.4% because of a 0.6% cap on potential improvements to the CPP offset. In contrast to this, the police officers and firefighters can access an accrual rate as high as 2.33%. This is total discrimination. I feel the need to remind you that the stressful and dangerous nature of our job is no different from that of police officers and firefighters when we step out in the community.

Bill 206 is deeply flawed and should not be rammed down without serious changes—changes that provide for accountability, representative governance and changes that provide for equity for all plan members. Bill 206 does not even begin to address my members' issues. My members expect that their concerns will be taken seriously and have faith that the government will do what is right and what is just. Don't prove them wrong. Change Bill 206 so that my members can retire with dignity.

CUPE Ontario has called for strike action to oppose Bill 206 in its current form. You need to know that we will not be steamrolled over on matters concerning our pension and our future. We will continue to fight for fair pension plans.

**The Chair:** You've left about three minutes for each party to ask you questions, beginning with Mr. Hardeman.

**Mr. Gonsalves:** Just before that, I'd like Antoni to follow up.

**Mr. Antoni Shelton:** I just wanted to say that with regard to representation on the sponsors corp and the admin corp, CUPE believes that the government would be well advised, regardless of what decision it eventually makes, to stay out of the internal politics of CUPE. CUPE Ontario is a provincial body and there is only one CUPE provincial body in Ontario, and the OMERS plan is a provincial plan. CUPE reserves the right to decide who sits on the sponsors and admin corporations for CUPE. Thank you.

**The Chair:** Okay, it's about two and a half minutes for everybody, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation. Again, I want to say that we've had a lot of discussion about the supplementary plans. We've been told now in this discussion that in fact it is possible for other members of the plan besides the police, fire and ambulance to have supplementary plans. I personally was under the impression that wasn't possible. The parliamentary assistant says that the plan can create those supplementary plans, but it would require the impossible task of having a two-thirds vote on the board to make that happen.

I guess the issue is—and we've had quite a bit of debate about it—if the government believes that all should be entitled to, or have the ability to negotiate, a supplementary plan, why would it be designated to just some and not to all, in your opinion? Why couldn't they



have just added, "The supplementary plans would be mandated for everyone," and then they could negotiate them, if deemed appropriate?

**Mr. Shelton:** Thank you for the question. We understand quite clearly that with regard to the two-thirds majority that's required on the sponsors corp, it effectively renders null and void our access to supplementals. Furthermore, the menu of supplementals that has been offered to fire and police, with a two-year window for their implementation, is something that has not been offered to the NRA 65.

On both fronts, our members are discriminated against; first, as I mentioned, in terms of the nature of the two-thirds supermajority, which was only introduced through second reading amendments. As we know through bargaining, a two-thirds majority effectively gives the minority on the board a veto. We think this is discrimination. As was originally drafted in Bill 206, it should be a simple majority. That's a hurdle that we believe has really been put there to prevent our fair access to supplementals.

The second issue is the fact that fire and police have been given the privilege of a specific menu of supplementals which they have access to, which bypasses the problem of the supermajority on the sponsors corp. They're allowed to have direct access to those supplementals.

We're not asking for police and fire to be denied any of these privileges; we're asking not to be discriminated against. As the previous speaker said, we believe this is systemic discrimination against our members, and we're asking the government not to go down that road.

**Ms. Horwath:** Interestingly enough, a CUPE presenter earlier on said that after the first set of presentations, she felt some comfort—I think it was Local 79—that the government was making all the right sounds around their willingness to accommodate and to take seriously the concerns that were brought to the table by CUPE last time around. Do you get the sense that the government has heard the issues that you're bringing forward, and are you getting any signals that they're prepared to move on some of these changes that you're asking for?

**Mr. Gonsalves:** If we felt that the government was taking our requests seriously and implementing them in this bill, I don't think we would be here today.

**Ms. Horwath:** Just as a follow up, is that why your organization is taking the position that it's taking around the possibility of striking on this issue?

**Mr. Shelton:** As you know, we've made it clear that there are a number of issues that have been put on the table through amendments in second reading, like the supermajority, two-thirds majority, like having our managers on our side of the table—the clerks and treasurers—and we have the issue of the offset and the accrual rate cap. These are quite simply dealbreakers for us, and we can't support Bill 206 in its current form if these issues are not addressed.

1300

**Mr. Duguid:** Thank you very much, Mr. Gonsalves, for coming here today. It's good to hear from somebody on the front line and directly involved with their employees. So it's good of you to be here.

The question I have is, have you been told somehow or another that the government has not responded to any of the concerns of CUPE?

**Mr. Gonsalves:** No, I have not been told that.

**Mr. Duguid:** So you're aware that there are at least nine amendments made in the last round to accommodate concerns of CUPE. Actually, the majority of concerns of CUPE were in one way or another addressed. There are still some outstanding issues.

**Mr. Gonsalves:** That is correct, and that's my understanding: that we are here for those outstanding issues.

**Mr. Duguid:** That's terrific. Of the outstanding issues you mentioned—two or three, I guess, in your deputation—which one is your top priority at this point in time?

**Mr. Gonsalves:** I'd like to refrain from answering that question on the grounds that I feel that they're all priorities and I don't think that one can go ahead of the other. I think what's happening here is that it's playing one piece over the other. All of them need to be addressed for our membership, and that's what I'm here to speak about. I'm not here to talk about which is priority and which should be put on and which should be taken off. I'm here for all of them to be heard.

**Mr. Duguid:** I understand that answer. It would be nice to know, though, whether there are some you feel more strongly about than others. As we're going through this, it's sometimes good to know that. But I understand your answer.

**Mr. Gonsalves:** I can understand that.

**The Chair:** Thank you very much for being here today. We appreciate your deputation.

## TOWNSHIP OF MIDDLESEX CENTRE

**The Chair:** Our last deputation for this session is the township of Middlesex Centre. Good afternoon, and welcome. Thank you for being here. We've saved the best for last, I'm sure, so we appreciate your being here. If you could identify yourself and the organization you speak for, once you've done that, you will have 15 minutes. If you leave time at the end, there will be an opportunity for us to ask questions.

**Mr. Al Edmondson:** Thank you very much. It's a pleasure to be here. My name is Al Edmondson. I'm the acting mayor of Middlesex Centre, one of eight lower-tier municipalities in the county of Middlesex. Today I have with me our CAO, Paul Mylemans. You can ask either of us questions at the end of the presentation.

We are fortunate to have this opportunity to express our views on behalf of the township, the county and, I'm sure, the many other municipalities that weren't afforded this opportunity, even though they may have wished to be here.



There is no question that Bill 206 is an enormous concern for those charged with the protection of our property taxpayers' interests, and those concerns revolve around the theme of accountability and transparency.

Honourable Chair, ladies and gentlemen, a gracious good afternoon to you. Each of us at some time in our public or our personal life has made a promise that he or she could not keep. Thus, we often wish that we had never made it. When it was made it was done with good intentions, but often without the knowledge of the circumstances or the factors that would be in play when it was to be delivered.

Whether you are a government or a parent, it is difficult to deliver the message that you cannot deliver on your promise. It takes courage to do that in a forthright way. On occasion, this government, despite the known fallout, has had the courage to back away from its promises for the greater good of the people of Ontario. Knowing when and having the strength to admit you are wrong is admired.

In the case of Bill 206, we have great trepidation that that is not the case. Some years ago, before this government was elected, a commitment was made to the police and fire associations that there would be devolution of the OMERS plan and, further, that supplementary agreements would be included. We have heard this many times. I have the documentation here if it's needed.

We will not delve into the reasons for this promise that was made, but rather examine the results as we see them. There is a maxim that suits the promise well: Vision without action is a dream, but action without vision can be chaos. I repeat: Vision without action is a dream, but action without vision can be chaos. Bill 206 relates to the latter part of this maxim, and it is the chaos that concerns us. The reasons we make such an assertion are as follows:

(a) The ramifications to the taxpayers across the province were apparently given little consideration. The only numbers we have seen are those that municipalities have put together based on the modelling from OMERS.

The impact on labour relations is far from clear, and we know you have heard the concerns from both labour and management representatives.

(b) When a bill needs 100 amendments, mostly from the party presenting it, it raises the question in our collective minds, is it possible it was flawed in the first place? Was the vision clear?

Last August at the AMO conference, when the bill was first presented to municipalities in a public forum, there were clear concerns raised about the devolution, supplementary agreements, the so-called checks and balances, and the door that arbitration would open in terms of the potential long-term costs. It was suggested by the government side that devolution was a natural evolution. Devolution of fund management may be natural but the addition of mandatory supplementals, the adversarial nature of management structures, and the processes included in this bill are anything but natural.

Most changes in direction bring with them some positive results, yet when an expert from BC speaking at the conference was asked about the benefits of devolution, in his experience, there was none forthcoming.

Mediation-arbitration was a real concern and indeed a professional mediator advised us there that it not be included due to the lack of precision or equality with which such decisions are made. That has been spoken to several times this morning and this afternoon.

Mayor McCallion, at a subsequent ministers' forum, expressed the view that little homework had been done on this issue by the province and requested that it not be rushed, leaving time for all to understand the financial implications for the taxpayers, both present and future. The reply gave assurance that the time frame was more than ample. In view of these hearings and the endurance that you people have shown, such a reply was perhaps overstated.

Months later, we received a letter from Minister Gerretsen stating, "Bill 206 will not impose new costs or pension benefits on any employer." Such a statement avoids or sidesteps the true implications of the wheels that are set in motion by the passing of this bill, a point made by a myriad of presentations thus far. We take no comfort that Minister Gerretsen's statement reflects any financial analysis.

Citizens want to know that they can trust their municipal representatives, and municipalities want to know that their interests and those of the taxpayers are being protected by the politicians and so on. Without complete understanding or disclosure of the possible costs of Bill 206, this trust is in great jeopardy.

In our personal lives, when entering into an agreement there would be few among us who would not want to know the details and the cost, whether it be for a car lease or a business venture. We have recently been reminded by circumstances that as municipal politicians it is essential that we understand all the ramifications of complex new deals. I don't need to remind you where the problems occurred, but you can understand why we are extremely cautious when we are told, "It's okay. You can trust us."

#### 1310

In the Municipal Act it is the legislated duty of the municipal politician to develop the programs and policies of the municipality. In doing so, it is essential that the financial and other implications of any policy or program be evaluated, debated in public and communicated to the ratepayers for feedback; that that feedback be reviewed and the recommendation be revised, if necessary, and only then the matter be presented for a final decision.

Is it clear to each and every committee member here that all of the above has been accomplished, and each one of you understands the full ramifications, financial and otherwise, of Bill 206? Further, is it clear that each member of the Legislature who is charged with the duty to vote on its acceptance will have access to this degree of understanding if they so choose? We charge you that if such is not the case, then your duty as elected officials,



such as is required under the Municipal Act, has not been fulfilled.

We continually must balance new demands with old, as our citizens already pay the highest property tax bills in Canada and the G8 due to the unprecedented \$3 billion of provincial social service costs being collected on property taxes, and that number comes from 2003. Is it any wonder we push back when the province puts its hand even deeper and more firmly into the property taxpayer's pocket with Bill 206? It cannot go further.

We need to know, as should you, that the promise by our Premier does not result in an action without vision that has the potential to cost the taxpayers of this great province dearly. We also need to know, if such is proved to be the case, as on other occasions, that the Premier and this government will have the intestinal fortitude to withdraw the bill and send it back to the drawing board knowing that he and his party are truly serving the Ontario public and recognizing that true political representation is doing what you ought to do, not what you want to do.

Pull back, get the facts and display them, as you understand them, for all to see, and maybe then we can work together to see what can and should be salvaged from this initiative.

Thank you very much for your attention.

**The Chair:** Thank you. You've left one minute for every party to ask a question, beginning with Ms. Horwath.

**Ms. Horwath:** I hear in your comments your concern about the cost of supplemental plans on the municipal taxpayer. I wanted to ask you a question, though, about the process by which supplemental plans will be coming into effect, and that is the process of negotiations. Have you participated in negotiations with your unions?

**Mr. Edmondson:** I have not personally, no.

**Ms. Horwath:** But you understand that it's a matter of taking, for example, many, many issues in terms of the collective bargaining process, whether it's language in the collective agreement or compensation package.

**Mr. Edmondson:** Yes.

**Ms. Horwath:** I wanted to focus on the compensation package particularly. It was my experience when I was on municipal council that the compensation package included many different things, and part of that was benefits and part of it was wages. Do you envision, should the supplementals go forward in this legislation, that there would be an offsetting, perhaps, of an ask for wages if there's also an ask for improved benefits? Do you see what I'm saying? So if the negotiating committee comes forward from the union's perspective—firefighters or police—asking for increases in supplemental benefits, would they not then also not be asking for as much in their wage ask, for example, understanding that, "You can't get everything, so perhaps we won't ask for as much of a wage increase because we're asking for supplementals in this round of bargaining"? Does that make sense to you? Is that a possibility, do you think?

**Mr. Edmondson:** I'm understanding the general consensus of that. Maybe Paul wants to comment on that as well. I would say that in many negotiations, people ask for more than they know they're going to get. Without going into any great details, I think the previous presentation made by Niagara addresses our concerns in the fact that because you have the arbitration possibility—in fact, the likelihood—that causes great concern for any municipality, as was expressed by Guelph and Niagara Falls this morning, in the sense that you have no control. Arbitration, as we've mentioned, is certainly not an exact science.

**Mr. Duguid:** I want to thank you for a very thoughtful and well-put-together presentation—well delivered as well. I very much enjoyed your presentation. You touched on a subject—disclosure of possible costs—that a number of parties alluded to today and yesterday. I just wanted to clarify with you and get a response from you.

OMERS has provided all stakeholders with the costing information on the supplementals. They provided it in 2004. The provincial government requested them to provide it again in 2005, which they have, to all stakeholders. So disclosure of costs is really not an issue. Although it's been mentioned a number of times, some municipalities seem to think there are numbers out there that they don't have. There are not. AMO has those numbers, and they've used them.

What is at issue is the estimates that some municipalities are suggesting, that there would be full take-up of all the benefits. The testimony we've heard today and yesterday, and previous testimony, would suggest that that's totally unrealistic and it's not going to happen. Legally, in fact, in the legislation, it can't happen because you are only allowed to negotiate for one benefit per collective bargaining process.

My question is, were you aware of that and—

**The Chair:** Thank you, Mr. Duguid. That's a long question.

**Mr. Edmondson:** Yes, we were aware of that. I appreciate the question. But I believe that that's per negotiation. The other threat that might come out of that is the fact that we would no longer have two- and three-year contracts, that we would have shorter contracts. That's a possibility. Each time you have a contract, you can bring forth another. Therefore, you have a building, which is a real threat, and that's what we're saying. As far as I know, I have seen no numbers other than those that have been produced by AMO and their group. If you can produce some of those other numbers, I and everybody in Ontario would be very pleased to see those.

**Mr. Hardeman:** Thank you very much for your presentation. I much appreciate it. Through the whole hearing process we've been hearing comments that relate back to the minister's letter saying, "Don't worry. Trust us. There will be no extra costs, no extra benefits in this plan," and that do not even—and I don't think you do in your presentation—point out that that's wrong, except that others have different views. So far the proponents of this legislation have put nothing forward on what their



views are as to extra cost, the likelihood of gained benefits in negotiations beyond this bill, what impact that will have on municipal budgets. No one has done any work on that; at least there appears to be no work on that, because none has been put forward.

I don't really have a question. I just want to say thank you for putting it forward and to point out that really it's a request to have a better look at what's happening here to make sure that we all understand the impact of this change as we move forward.

I would agree with you, and thank you very much for putting on the record that we all should make sure that everything is addressed before we put the seal of the province on the bottom of it to say that this is the best way to deal with it.

**Mr. Edmondson:** Thank you very much. Do we have a moment? Paul, do you have a comment?

**Mr. Paul Mylemans:** No, I think it's been said very well, thank you.

**Mr. Edmondson:** I would just like to thank you as a group for what you've done. Today, you've been very patient—good questions—and you didn't just listen; you heard.

**The Chair:** Thank you for your time today.

This brings to a close our hearings for the day. I'd like to thank all the witnesses, members and staff for their participation in the hearings.

I'd like to remind all members that amendments to Bill 206 should be filed with the clerk of the committee by 4 p.m., Monday, January 30.

This committee now stands adjourned until 10 a.m. on Wednesday, February 1, for clause-by-clause consideration of the bill.

*The committee adjourned at 1320.*





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## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 1 February 2006

# Journal des débats (Hansard)

Mercredi 1<sup>er</sup> février 2006

**Standing committee on  
general government**

Ontario Municipal Employees  
Retirement System Act, 2006

**Comité permanent des  
affaires gouvernementales**

Loi de 2006  
sur le régime de retraite  
des employés municipaux  
de l'Ontario

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 1 February 2006

Mercredi 1<sup>er</sup> février 2006*The committee met at 1009 in room 151.*ONTARIO MUNICIPAL EMPLOYEES  
RETIREMENT SYSTEM ACT, 2006  
LOI DE 2006  
SUR LE RÉGIME DE RETRAITE  
DES EMPLOYÉS MUNICIPAUX  
DE L'ONTARIO

Consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act /  
Projet de loi 206, Loi révisant la Loi sur le régime de  
retraite des employés municipaux de l'Ontario.

**The Chair (Mrs. Linda Jeffrey):** Good morning. The standing committee on general government is called to order. I apologize for the delay. We meet this day for the purpose of clause-by-clause consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act. We will now commence clause-by-clause consideration of the bill.

We do have an overflow room for anybody who is waiting or considering coming into the room. I don't know what that room number is yet. I will announce it when we do have that room.

Our first motion: Ms. Horwath.

**Ms. Andrea Horwath (Hamilton East):** Thank you, Madam Chair. I move that the bill be amended by adding the following section before the heading "Ontario Municipal Employees Retirement System":

"Paramedics

"1.1 On and after the day that this section comes into force, the normal retirement age of members who are employed as paramedics, as defined in subsection 1(1) of the Ambulance Act, is 60 years if the employer has changed the normal retirement age of the class of employees to which the member belongs to 60 years."

**Mr. Brad Duguid (Scarborough Centre):** Madam Chair, just on a point of order—

**The Chair:** Can I ask you to hold that thought? Because procedurally, I have to do section 1. It's my fault that I didn't do that.

**Ms. Horwath:** Are you going to make me read it again, though?

**The Chair:** No. I won't make you read it again. You did such a good job.

Any discussion on section 1? No. Shall it carry? All those opposed? That's carried.

We'll move on to your motion, Ms. Horwath. Did you want to provide some background to your motion?

**Mr. Duguid:** On a point of order, Madam Chair: Just to save Ms. Horwath providing that information now, she may want to just wait and provide it later. I was going to ask, if possible, that this one just be stood down. I did ask the legislative counsel for some information on this, and I haven't seen it yet. I have our own staff just reviewing some of the legal issues with regard to this, so I'm wondering, with Ms. Horwath's approval, if we could stand this down just to take a closer look at it.

**Ms. Horwath:** Sure. In the interest of people having all the information, absolutely. No problem.

**The Chair:** Thank you. Okay.

**Mr. Duguid:** On a second point of order, Madam Chair: I believe the committee has received a letter from the OMERS board, which I just got as I got here this morning. It makes some suggestions to us to consider. I have no problem with asking our staff to take a look at their suggestions. It impacts three motions that are before us today, and I would ask that maybe we stand these three motions down until we get a chance to review the letter. They are motion 2, motion 15 and motion 17. I would ask that we stand those down as well.

**The Chair:** Is there any discussion on that request?

**Mr. Ernie Hardeman (Oxford):** I'm just wondering, could I get a clarification on what we're standing down?

**Mr. Duguid:** Sure. I'll go through them, if you like. Motion 2 is a government motion, which is more of a housekeeping item. The motion would add greater clarity, to ensure that all funds created by OMERS are continued afterwards. So it was sort of a clarity motion. I think it's more of a housekeeping item.

Fifteen—

**The Clerk of the Committee (Ms. Tonia Grannum):** That's page 15, right?

**Mr. Duguid:** Motion 15 is again a government motion. The motion clarifies exactly what benefit would be provided in a supplemental plan.

**The Chair:** Mr. Duguid, I see a look of query on Mr. Hardeman's face, so could you provide not only the page but the subsections? That might help people to follow along. Would that be helpful? So on the second motion, we're talking subsection 3(3).

**Mr. Hardeman:** Madam Chair, I'm just curious as I look at this. The parliamentary assistant talks about government motions for amendments, but all I have before

me is a letter from OMERS, who was one of the presenters here and who, I presume, gave all the information that is behind this letter. They are now, in this letter, making a further presentation, with suggestions of amendments that they have looked at that are going to be proposed, and the government is saying, "Well, they may be right. We may be wrong. We may not agree with our own amendments, so we'll put these down and we'll see, with the second presentation, whether we're going to listen to OMERS this time around."

I'm just a little concerned about the process that we have here. I don't object to ending up with the best possible piece of legislation, which may require having a second look at the operators of the plan and their presentation, but I'm a little concerned about how we're doing this. What we have before us here is just a letter outlining—I look here at the first one: "A number of our recommended changes in this regard were adopted at seconding reading, however, the bill still does not entirely achieve this goal and there remains some ambiguity," on the overlap of the two.

Now, we've had considerable debate before this committee about that problem, that OMERS had said in the initial presentation that we should be very careful to make sure there was no overlap between the sponsoring organization and the administrative organization. I would assume that in the interim time the government has looked at their amendments to make sure that, if they intended to achieve that, they had achieved that. To then come back with a second presentation from the same presenter saying, "You've come halfway. Let's see if we can't convince you to come the other half," I'm having a little trouble with that as to process, as to how we got here. We're not doing more delegations today, we're doing the clause-by-clause, so I guess it's really where the government is coming from on this piece of legislation.

I'm a little concerned that we started with a piece of legislation that was the be-all and end-all to dealing with the OMERS pension situation, and now we have something like 150 amendments and we're standing down part of the bill in clause-by-clause because we may want to amend our amended amendments. I'm getting a little concerned about whether we know what we're doing with this bill.

**Mr. Duguid:** I have no question that these are complicated issues, and many of the amendments do require a great deal of expert scrutiny. We're not arrogant enough to think that, if you've got 100 amendments, every single one of them is going to be perfect.

I haven't read this letter, other than glancing through it. I don't know what the implications are of this letter; I don't know what the recommendations are. I think, though, it would be wise of committee to take it under advisement and in so doing to ask our staff to take a close look at it to see if these are some suggestions that might be worth recommending. If they are, we'll certainly report back to the committee, I would expect sometime after the lunch break today, when I've had an opportunity

to actually read the letter, to see whether in fact there may be a need to amend a government motion here or there, or maybe not.

**Ms. Deborah Matthews (London North Centre):** And it would be irresponsible—

**Mr. Duguid:** That's right. I think it would be irresponsible for us to just ignore this new information, and I think it would be wise of committee to take a look at it.

**Mr. Toby Barrett (Haldimand-Norfolk-Brant):** I would—

**The Chair:** Can I let Mr. Duguid finish, and then I'll let you have the floor.

Mr. Duguid, would you like to go on with what other motions—you were in the middle of 15, I think it was, and what was the last one, 17?

**Mr. Duguid:** Number 17 was the last motion, yes.

**The Chair:** So 17 is—

**Mr. Duguid:** It is again a technical amendment to ensure that the terminology was consistent.

**The Chair:** Just the number.

**Mr. Duguid:** Subsection 11(3).

**The Chair:** Thank you. Mr. Hardeman?

**Mr. Hardeman:** I have no problem with it, Madam Chair. I would just point out that, in the month or six weeks we've been at this, we've had so many amendments with thorough thought and preparation. I'm a little concerned that, in haste, we'd be making changes that in fact were not well thought out, because I find it hard to understand how we could do all these reviews and come up with an amendment in 20 minutes or half an hour—or in two hours, for that matter. I think this is kind of late in the game, late in the battle, to be changing your battle plans. We'll let it go at that.

**The Chair:** Ms. Horwath.

**Ms. Horwath:** Just in the interests of making sure that all interested groups have an opportunity to see exactly what the government is looking at in terms of possible changes that would be affected by this, I'm just asking whether the clerk has had a chance to provide this to the research staff of the opposition parties as well. Can I just ask that the research staff of the opposition parties are assured to receive this document so that we can have our staff look at that as well?

**The Chair:** We'll make sure you have that as soon as possible.

So we'll move on to the next motion, which hasn't been stood down.

*Interjection.*

**The Chair:** Sorry. Mr. Duguid?

**Mr. Duguid:** On a point of order on motion number 3, the NDP motion: I've talked to Ms. Horwath about this already. There is a part of it that I'd like to get some further legal advice on. We just received these last night. I should have that legal advice, I would think, by the end of the day today for sure. I had mentioned it to Ms. Horwath. I'd appreciate it if we could just hold this down just so we can get that legal advice so we can determine whether we can support it or not.



1020

**The Chair:** So we're talking about motion 2?

**Mr. Duguid:** This was motion 3.

**The Chair:** We're not there yet.

**Mr. Duguid:** Oh, I'm sorry. I thought we'd—

**The Chair:** That's okay. That gives me a heads-up for when I get there. I have to follow my road map; if things are out of order, I'm going to get confused by the end of the day. Let me get through section 2 and then we'll get to the next motion.

Shall section 2 carry? Any discussion? All those in favour? All those against? That's carried.

Section 3, which is motion 2, has been stood down; we won't be dealing with it.

We're on to section 4, which I believe is what you want to talk about, Mr. Duguid, after Ms. Horwath has brought forward her motion. Is that right?

**Mr. Duguid:** Yes.

**The Chair:** Mr. Hardeman, I see you signalling. Has it to do with business I've just done or am about to do?

**Mr. Hardeman:** I'm afraid you lost me around the first bend. In setting down section 1, we also set down the amendment for 1.1?

**The Chair:** Section 1 in the act carried. What we set down was—

**Mr. Hardeman:** Section 1 carried?

**The Chair:** Section 1 in the act.

**Mr. Hardeman:** Did we deal with the NDP motion?

**The Chair:** We were dealing with 1.1 of the act. It has been asked to stand down section 1.1. That's not section 1; it's a new section. So 1.1 comes after 1, and that's stood down. Okay?

We're on section 4, which is the NDP motion number 3.

**Ms. Horwath:** I move that section 4 of the bill be amended by adding the following subsections:

“Restriction on use of primary pension plan assets

“(2) No assets of the primary pension plan shall be used for the purpose of paying any optional benefit under a supplemental plan or funding the payment of any other liability of a supplemental plan.

“Same

“(3) In the event that any supplemental plan, or any provision of any supplemental plan, increases the actuarial liabilities of the primary pension plan, the supplemental plan shall transfer assets to the primary pension plan sufficient to fund the increased liability.

“Same

“(4) All costs related to the transfer of assets to the primary pension plan under subsection (3) shall be paid from the supplemental pension plan.”

Again, this is just tightening the language regarding cross-subsidization of plans.

**The Chair:** Mr. Duguid, was this the item you wanted to talk about?

**Mr. Duguid:** Yes. I was just going to ask that this item be held down. I've asked staff to review a section here to get some legal advice.

**Ms. Horwath:** That's fine.

**The Chair:** The next motion is a government motion.

**Mr. Duguid:** I move that subsection 5(3) of the bill be amended by striking out “For the purposes of this section” at the beginning and substituting “For the purposes of this section and section 7”.

**The Chair:** Do you want to give us an explanation?

**Mr. Duguid:** This ensures that school boards can't take non-teaching staff out of OMERS. It prevents a fragmentation of the fund. It further protects the OMERS fund. It was agreed to by all the stakeholders. OMERS had requested this change.

**The Chair:** Any discussion?

**Mr. Hardeman:** I'd just like a little further clarification. This is to make sure that no one can leave the plan, as opposed to wanting to get in?

**Mr. Duguid:** Non-teaching staff can't be taken out of OMERS, so they keep them all within. My understanding is that all the stakeholders had agreed to this. This is something that should have been in there.

**Mr. Hardeman:** Is it an obligation that all people who are presently in are locked into the plan as their only choice?

**Mr. Duguid:** Say that again?

**Mr. Hardeman:** Is every employee presently in the OMERS plan obligated to be in the OMERS plan?

**Mr. Duguid:** Yes. They can't go off and join another plan.

**Mr. Hardeman:** So why is this necessary, if they're already obligated to be in there? Or is it strictly in the school board that they're not?

**Mr. Duguid:** I think it was unintentionally omitted from the original, and that's why they're including section 7.

**Mr. Hardeman:** Thank you.

**The Chair:** Any further questions? Shall the motion carry? All those in favour? All those opposed? That's carried.

Shall section 5, as amended, carry? All those in favour? All those opposed? That's carried.

Shall section 6 carry? All those in favour? All those opposed? That's carried.

Section 7; Mr. Duguid.

**Mr. Duguid:** I move that subsection 7(1) of the bill be amended by striking out “other than a school board”.

The rationale for the motion is that this maintains the status quo. It will ensure that the non-teaching employees of school boards who are not eligible to be members of the Ontario teachers' pension plan must continue to participate in OMERS. It's similar to the last motion. Again, the OMERS board requested this change, technical as it is.

**The Chair:** Any debate? All those in favour of the motion? All those opposed? That's carried.

Shall section 7, as amended, carry? All those in favour? All those opposed? That's carried.

Section 8; Mr. Duguid.

**Mr. Duguid:** M. Lalonde is going to do that one.

**Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell):** I move that section 8 of the bill be amended by



striking out “paragraphs 1 to 7” in subsection (1) and in subsection (2) and substituting in each case “paragraphs 1 to 7 or paragraph 9 or 10.”

**The Chair:** Discussion?

**Mr. Duguid:** It's again largely a technical amendment, similar to the previous ones. It ensures that the sponsors group and admin corporation employees, who will be part of the fund, are also restricted to staying in that fund. It's just like all the other employer groups. That one just hadn't been thought of, and they were omitted from the original bill.

**The Chair:** Any discussion?

**Ms. Horwath:** Can I get that explanation again, please? I'm not quite sure exactly what it's referring to.

**Mr. Duguid:** In the original bill, all employee groups were treated in a certain way in that they all have to remain part of the OMERS pension plan; they can't go off and get their own pension plan. We didn't include employees of the sponsors corporation or administration corporation under that, and they should be treated like all other employees under the plan. This just includes them in that category as well. That's my layman's explanation.

**The Chair:** Any other questions?

**Mr. Hardeman:** Madam Chair, I haven't found section 8, paragraphs 1 to 7. Unless I'm missing something, section 8 only has two subsections in it.

**Mr. Duguid:** It goes back to subsection 5(1), paragraphs 1 to 7. Subsection 8(1) refers back—it's complicated.

**Ms. Horwath:** It refers back to section 5, which then, in paragraphs 9 and 10, speaks to the sponsors corporation and admin corporation—

**Mr. Hardeman:** I've got it.

**The Chair:** Shall the motion carry? All those in favour? All those opposed? That's carried.

Shall section 8, as amended, carry? All those in favour? All those opposed? That's carried.

Section 9; Mr. Duguid.

1030

**Mr. Duguid:** I have an amendment I have to explain to the committee members. I guess I have to introduce it first, then I'll explain it.

I move that the bill be amended by adding the following section:

“Defined benefit plan

“9. Every OMERS pension plan must be a defined benefit plan.”

That's not the motion in front of you here, and I'll explain why I'm moving that. I need unanimous consent to move this. You may recall that at the original hearing we voted down this section. In order to reintroduce it, you need unanimous consent to move a motion that was previously voted down. So I'm moving that. If we do not have unanimous consent, this other motion would then be in order. It has to be different; the difference is that it would only apply to the primary plan as being a defined benefit plan. I'm happy to take questions from the opposition if they're not sure what we're trying to do with this.

**Mr. Hardeman:** In the name of expediency, I need to have a discussion on the motion before we can give unanimous consent to introduce that one. I have some concerns with allowing it to go back in the way it was. It deals with the issue of what happens to supplementary plans. If you put that one back in, that means every plan of OMERS must be a defined benefit plan. We discussed it with one of the deputants. There is a real concern that at some point in time an actuary could actually decide that a supplementary plan is solvent with the types of premiums they have, but a year later, as happened with the premium holiday, we find there are not sufficient dollars in the supplementary plan to keep it solvent. In fact, under pension law, the main pension plan would become responsible for the defined benefits. On the other hand, if the supplementary plan becomes a defined contribution as opposed to a defined benefit, then it never crosses over.

If we put it back in that all OMERS plans will be defined benefits—this gets kind of complicated. The motion that was stood down earlier about the no cross-over of funds from one plan to the other—one of the two won't work, because at some point, if there is a discrepancy and there is not enough money to fund the liability of any supplementary plan, the main plan is going to have to cover the cost, under pension law. With that motion and this one, that would not be possible. So I really have a problem.

I don't have any problem with the present OMERS plan being a defined benefit plan. I was supportive of not changing it in the first place. Check the record; I didn't believe it should have been eliminated in the first instance. But now, having heard all the deputations, I have a real concern that if you define them all as defined benefit plans, we could end up with problems with one plan having to fund another one that the law says they're not allowed to do.

**Ms. Horwath:** Can I just ask some clarification from staff with regard to the analysis provided by Mr. Hardeman about whether that's an appropriate assumption? Could she also address the extent to which, for example, the motion we stood down, page 3, might address that very issue?

**Ms. Janet Hope:** I'm Janet Hope, director of the municipal finance branch, Ministry of Municipal Affairs and Housing. My understanding of the federal law, under the Income Tax Act and the rulings of the Canada Revenue Agency, is that when a supplemental plan is set up, there cannot ever be transfer of assets between a base plan and a supplemental plan. There is complete financial separation between the plans. So if at any point in time a supplemental plan were underfunded, ran into funding difficulties, there could never be recourse to the primary plan. It would be necessary to either increase contributions to the supplemental plan, to wind up the supplemental plan, to change the nature of the supplemental plan, but if there's an issue of underfunding in the supplemental plan, it must be addressed within the confines of the supplemental plan. It is not my understanding



that there's any relationship between the issue of rebound costs, if I can put it that way, and the issue of whether plans are defined benefit or defined contribution plans.

**The Chair:** Ms. Horwath, did that answer your question? Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the explanation, but going on with that, who pays the unfunded liability if a supplemental plan becomes insolvent? Who becomes responsible for the unfunded liability if the participants should decide not to participate in it?

**Ms. Hope:** There are a couple of issues in what you're asking about, as I understand it. The participants in the plan, the employers and the employees, have the responsibility for the plan. If individuals withdraw and the plan cannot continue, doesn't have funds to continue, then you've got issues of potential windup of the plan. Then the issue of the Minister of Finance's statement on solvency funding become relevant. The Minister of Finance—I don't have the exact language in front of me—has gone on record to say he'd be prepared to support, through regulation, exempting supplemental plans from the solvency funding requirements, provided certain circumstances are met. I understand that the end result of that is that if a supplemental plan became insolvent and had to be wound up, it would only pay out to the extent that there were funds in the plan.

**Mr. Hardeman:** So a person retired on a supplementary plan could, five years down the road, find they no longer get the supplementary pension?

**Ms. Hope:** Yes, but that individual is still a member of the base plan and is entitled to all the pension benefits of the base plan. But if that individual were also a member of a supplementary plan that became insolvent and could not pay out benefits, it's conceivable that individual might not receive some or all of the benefits that he or she was expecting under the supplemental plan.

**Mr. Hardeman:** In the case of a windup, would the provincial authority wind up the plan of an employer that's still solvent?

**Ms. Hope:** We may be getting a little bit beyond my technical abilities here, but it's—

**Mr. Hardeman:** I think it's very important, because the way I understand it, at some point in time, the sponsoring corporation becomes responsible for any unfunded liability in any of its plans, unless they actually go out of business, which we have all agreed municipalities are not going to be able to do. My concern is that at some point in time, the fund owned by the sponsors and the main plan will see fit to use their assets in that plan to fund the unfunded liability in a supplementary plan, if that should happen.

**Ms. Hope:** It's my understanding that that would not be permissible under federal law, so even if all the sponsors of the OMERS plan desired to do so, desired to use the main plan funds to fund a liability in the supplemental plan, it is my understanding that under federal law, that would not be permissible.

**The Chair:** I'm going to interrupt now, because I have to determine whether we have consent to deal with

this motion before we get into the nuts and bolts of it. Unanimous consent is needed. We don't have consent.

Going back to the original motion—Ms. Matthews, you're going to be reading it?

**Ms. Matthews:** I move that the bill be amended by adding the following section:

“Defined benefit plan

“9. The primary pension plan must be a defined benefit plan.”

**The Chair:** Any debate? Mr. Hardeman.

**Mr. Hardeman:** To the legal branch again, having just gone through that, if this motion passes, now we are going to have that just the primary plan must be a defined benefit plan; the supplementary plans can still be a defined benefit plan, but they don't have to be. If all the parties agree it should be that way, and obviously, if they set it up that the premiums coming in will cover the benefits they say they're going to pay out—as long as everything runs properly, it's somewhat irrelevant which it is. Is that right? The only time it would matter is that if there were no money and neither of the parties were willing to put the money in to cover their liability, they'd have to reduce the benefits.

1040

**Ms. Hope:** There is a technical difference in what individuals get in a plan, whether it's defined benefit or defined contribution. Aside from that, I think I agree with your statement.

**Mr. Hardeman:** But in the end, in reality, for everybody, as long as they pay sufficient premiums to cover the cost of the supplementary plan, their benefits will never be reduced?

**Ms. Hope:** Unless those who have authority for the plan—

**Mr. Hardeman:** Unless they agreed to do that.

**Ms. Hope:** Yes—could change the text.

**The Chair:** Ms. Horwath.

**Ms. Horwath:** I'm a little bit frustrated, because the position we're now in is really untenable; that is, the government is bringing forward this motion which, because of its own fumbling of the ball the first time around, has now led to the thin edge of the wedge being provided in the OMERS pension plan. It's disheartening that they didn't have their t's crossed and their i's dotted to be able to recognize that this second-best motion here is completely unacceptable.

It really does speak to the lack of understanding of the government's initial attempt at the devolution of OMERS. It says that the principle of defined benefits, which is really an underpinning of the OMERS pension plan, is in fact the underpinning of any pension plan that's actually going to provide for stable income for people upon retirement—all pension plans, in my opinion, should be defined benefit. But what the government has now done, because of their fumbling of the ball initially or because of their inability to understand what they were doing the first time around due to the complexity of this bill, is in effect to allow for these



plans to now begin to be considered as defined contribution.

I would hazard to say that none of the employee members of the plan would be supportive of this kind of compromise. I'm not going to be able to support this motion, not because I don't think that the primary pension plan should be a defined benefit pension plan—absolutely I believe that—but I believe it's a poor excuse for trying to fix a problem that the government put on itself in its initial round of hearings on this bill and in clause-by-clause on this bill.

I'm sorely disappointed, to be frank with you, because I think it's irresponsible. It really is one of the things that highlights how this process has been cumbersome from the beginning. There are ways in which the government could have dealt with the process; it has come up by stakeholders during the public hearings, in both the initial round and the most recent round last week that the government had an opportunity to pull stakeholders together or to set them a place where they could get together to go over these issues over a period of time.

Instead, this ill-conceived bill was brought to us at the end of last year. Just by looking at the second reading version, with all the strikeouts—I mean, there's more blue in the document than there is black. I hazard to say that at the end of this clause-by-clause, there won't be any black left in the bill. I think that indicates that the government made an egregious error in the way they brought this legislation forward.

It's unfortunate now, because the result is that we end up with motions like this to try to correct a problem from the last time around that, in effect, simply make a very negative statement about the government's commitment to the principle of defined benefit pension plans, which we all know—or we should know, anyway—are the ones that actually prevent people from losing their investment in pension plans over time because they're not as vulnerable to market whims as defined contribution plans are.

I'll leave it at that, Madam Chair, but I have to say that although I absolutely support the principle of the pension plan being a defined benefit plan, all of the plans, in my opinion, should have been defined benefit. It's extremely frustrating to be in this situation now, where that can't be guaranteed through this process.

**Mr. Hardeman:** I want to agree with all the comments made about the fact that the bill must have been written somewhat in haste and not really thought out very well. The member is totally right: When I look at the document where we have the two colours, there is more blue than there is black; that is, there were more changes than what is left of the original bill. That was before we got here, and now we have upwards of 50 more amendments being put forward to correct the problem.

Dealing with just this issue, though I'm not supporting the bill, I think this is actually closer to treating everyone fairly than the original. Though as a government they may have got here by accident, I believe it's the right thing to do, because everyone who is presently in the

OMERS plan has a right to expect that it was a defined benefit plan before and it will be a defined benefit plan when it's finished. With this motion, everyone who is presently in the plan is guaranteed that it is a defined benefit plan from here on and into the future.

The only thing this allows that the original doesn't is that people, as they negotiate supplementary plans, may very well want a defined benefit plan that would serve their purposes. It may not be the present ones talked about as supplementary plans; it may be a totally different supplementary plan or a different group of stakeholders that want to be part of it. They may very well not be able to make the types of contribution required to guarantee a certain benefit, but they may want to set that benefit based on the amount that both parties are putting in. I think this allows future supplementary plans to be more designed for the needs of the people.

We were told a number of times during the public presentations that the pension world is going more toward defined contribution plans than it is to defined benefits plan. That doesn't mean I support taking this one away from being a defined benefits plan. As close as I can come to supporting it, I support this amendment more than I do the—with this, the whole OMERS organization will always be defined benefit as opposed to defined contribution.

**Mr. Duguid:** I want to begin by saying that we don't apologize at all for listening to our stakeholders and making improvements to this bill. I recognize that there were a number of amendments in the original hearings and there are a number of amendments here today. They are amendments that improve the bill. They are amendments that indicate that we are listening to stakeholders. I can recognize that the members opposite aren't used to that, because the previous government never listened to stakeholders and went through committees and rammed whatever they wanted to ram through with very few amendments. So this is rare in this place, but it indicates that we have listened. We've listened intently to stakeholders who have wanted us to improve the bill, and we've done that.

This is a complex bill—I know the members opposite know that—a bill that, no matter which party brought it forward, would require wording changes. Most of the amendments are technical in nature and come through our legal department. I think the government side and the opposition side have done an excellent job of getting their heads around this bill.

Again, I don't apologize at all for the amendments we've brought forward. They improve the bill. Good God, that's what we're here for, to bring forward the best possible legislation and listen to the public as they come in through the public hearings.

**Ms. Horwath:** Can I just ask: The extent to which supplementals could possibly become defined benefit plans would be a decision of the sponsors corporation subject to this two thirds supermajority vote?

**Ms. Hope:** Yes.

**The Chair:** Any further debate, discussion? All those in favour of the motion?



**Ms. Matthews:** Recorded vote.

**The Chair:** A recorded vote has been requested.

### Ayes

Dhillon, Duguid, Lalonde, Matthews, Rinaldi.

### Nays

Hardeman, Horwath.

**The Chair:** That's passed.

Shall section 10 carry? All those in favour? All those opposed? That's carried.

1050

Section 10.1; Mr. Rinaldi.

**Mr. Lou Rinaldi (Northumberland):** I move that subsection 10.1(1) of the bill be struck out and the following substituted:

“Optional increases, police and fire sectors

“(1) Despite any other provision of this act, the administration corporation shall amend the OMERS pension plans to provide optional increases in benefits for members of the primary pension plan who are employed in the police and fire sectors and establish the contribution rates for the benefits.”

**The Chair:** I'm just bringing to your attention that there's a new word in the motion that isn't in your printed copy; that is, between “primary” and “plan” the word “pension” has been added.

**Mr. Rinaldi:** In the second-last line.

**The Chair:** Any explanation, Mr. Duguid?

**Mr. Duguid:** That was just a last-minute change from our legal counsel. I guess “primary plan” maybe can mean a lot of different things, so “primary pension plan” provides a little more clarity.

What this does is that it ensures that the administration corporation will get on with the direction that the Legislature sets over the course of the next 24 months. This only applies for the initial 24-month transition period. It will ensure that the functions we're asking the administration corporation to complete—getting on with the supplemental benefits—don't get mired in some of the start-up challenges that may occur at the sponsors corporation. It allows the work to start being done over the course of the next 24 months, which may not otherwise take place, and then the work to get these supplemental benefits up and running could take a lot longer.

**Ms. Horwath:** Can I ask whether I'm correct in my assumption that this doesn't provide the same provision in terms of rights to the negotiation of a supplemental plan for the remainder of the plan members who aren't police, fire or paramedics?

**Ms. Hope:** If I understood your question correctly, this would apply only to the establishment of a supplemental plan within 24 months for police, fire and paramedics with respect to the specific benefits listed in 10.1.

**Ms. Horwath:** So members who are CUPE members, OSSTF members or CAW members, who are not

necessarily employed in police, fire or paramedics, are treated differently in terms of their established right within the legislation to negotiate supplemental plans. Is that correct?

**Ms. Hope:** The bill does provide the authority for the sponsors corporation to create a supplemental plan for those other employees but does not direct either the sponsors or the administration corporation to create such a plan.

**Ms. Horwath:** Absolutely. Just to clarify once again, this gives the as-of-right requirement for the supplemental plans to be negotiated, while at the same time, because the other employee plan members are not covered under this section and many others in regard to supplementals, it requires them to jump through a separate hoop, which is that of the two thirds majority requirement established in terms of the decision-making of the sponsors corporation in regard to supplemental plans for other employees?

**Ms. Hope:** I beg your pardon. I missed the question.

**Ms. Horwath:** The extent to which other employees—not police, fire and paramedics—in their attempts to get supplemental plans are required to go through a second hoop or another tier of process, which is the two thirds majority requirement for the sponsors corporation to establish supplemental plans for those groups.

**Ms. Hope:** This motion doesn't change in any way the direction that OMERS is to create a supplemental plan for specific groups of employees and the authority of the sponsors corporation to create supplemental plans for others.

**Ms. Horwath:** But this particular motion—if I may, Madam Chair; it's an important point—sets out the requirement for the supplementals that they must be established within 24 months for this one group of employees, but nowhere is there a similar requirement enshrined in this legislation that within 24 months supplementals be set out for other employees. In fact, for other employees, my understanding—again, it's a matter of the technical nature of this bill—is that this bill is silent on any requirement but is enabling, but the enablement requires a two thirds majority vote of the sponsors corporation. Am I correct in my understanding of the two tiers that exist and that are reflected in this motion?

**Ms. Hope:** The thing I would differ with is that this motion actually doesn't change the direction. The direction of the bill, as amended at first reading and as continued, including with this motion, is that there is a requirement to establish a supplemental plan with respect to one group of people, with respect to a specific list of benefits, and there is an authority to create a supplemental plan for other employees.

**Ms. Horwath:** I guess that was my point and why I thought it was important to raise it under this particular amendment, in that this amendment could have been the one that would have perhaps enabled the other employees to have the same right as police and fire in regard to the establishment of supplemental agreements. I think my



point has been made. I appreciate the opportunity, Madam Chair.

**Mr. Hardeman:** Just for clarification: I'm trying to figure out the difference between the previous amendment that was amended after first reading and this one. I'm seeing very little difference, but one of the things I noticed is that it doesn't include paramedics. Is there a reason for that? Is it somewhere else in the legislation, or are they not covered?

**Ms. Hope:** The bill, as amended at first reading, re-defined the police and fire sectors to include paramedics. So everywhere in the bill now, where you see the phrase "police and fire sectors," it is as defined in section 1 of the bill, and that includes paramedics. Every time you see "police and fire" in this bill, it means "and paramedics."

**Mr. Hardeman:** Is there a reason why it wouldn't just be added in each one?

**Ms. Hope:** I think we get into legislative drafting conventions of how one does amendments.

**The Chair:** No other debate? Shall the motion carry?

**Ms. Matthews:** Recorded vote.

**The Chair:** Another recorded vote has been requested for the government motion, page 8.

### Ayes

Dhillon, Duguid, Horwath, Lalonde, Matthews, Rinaldi.

**The Chair:** That's carried.

Page 9, which is another government motion; Mr. Dhillon.

**Mr. Vic Dhillon (Brampton West–Mississauga):** I move that paragraphs 2 and 4 of subsection 10.1(3) of the bill be amended by striking out "counted in full years and months, plus credited service and eligible service, counted in full years and months" in each paragraph and substituting in each case "counted in full and part years, plus the member's service, counted in full and part years."

**Mr. Duguid:** This is a technical amendment to ensure that the supplemental plans are implemented correctly. The amended language uses terminology to describe the plan member's service that is consistent with the language in the current OMERS plan. It's a request that came forward from the OMERS board.

**Ms. Horwath:** Can I get further explanation of exactly why it was required to be changed? What was ineffective or improper about the first drafting, and what really does this do?

**Mr. Duguid:** The only explanation I can give you is that the OMERS board indicated that the way we were referring to service wasn't consistent with the current OMERS plan. They wanted us to make sure it was consistent. I don't know if staff can add anything to that.

**Ms. Horwath:** So it doesn't change what had been the intention of the primary plan or the existing OMERS plan in any way?

**Ms. Hope:** Correct. It's an amendment to make sure that the intention is in fact crystal clear by using language that is consistent with the language in the current OMERS plan text.

**The Chair:** No further discussion? All those in favour of the motion? All those opposed? That's carried.

Next government motion; Mr. Duguid.

**Mr. Duguid:** I move that paragraphs 6, 7 and 8 of subsection 10.1(3) of the bill be struck out and the following substituted:

"6. The pension benefit payable to members of the supplemental plan is calculated based on the average annual earnings of the members over a period of service of three years, but the average may be less than three years for members with service of less than three years.

"7. The pension benefit payable to members of the supplemental plan is calculated based on the average annual earnings of the members over a period of service of four years, but the average may be less than four years for members with service of less than four years.

"8. The option for a member to elect to purchase credit in the supplemental plan for a benefit described in paragraph 1, 2, 4, 6 or 7 in respect of the member's service before the date the employer of the member consents to provide the benefit under the supplemental plan."

I've been advised that this just amends the technical language to provide greater clarity, to be clear that contributions would not be made for past service, but rather a purchase of credit. It's something that is generally the practice of other pension plans.

1100

**The Chair:** Any debate?

**Ms. Horwath:** I'm trying to figure out, from looking at the amendment in front of us and the last amended version of the bill we have—I'm wanting to confirm that this section was already amended the last time around, and now it's being amended again. Am I looking at the right part, on page 7 of the amended bill?

**Mr. Duguid:** Pages 7 and 8.

**Ms. Horwath:** I'm just trying to figure this out. If the initial amendments came from staff going through the bill, whether OMERS or municipal affairs and housing staff, and making their first set of amendments, what is it that changed? Is there an amendment we've made or a government amendment coming up that requires that initial amendment to now be re-amended?

**Ms. Hope:** It's really comparable to the last motion, in that different plans can use slightly different language to describe issues of buying back service or credit. These are very minor amendments. In fact, in several places, the original motion read "credited service." That's being replaced with "service," because that's more consistent with the language in the existing OMERS plan text. Again, it will make it crystal clear that this can be implemented as originally intended. It's entirely housekeeping, and it's to bring greater clarity.

**Ms. Horwath:** That leads one to assume that perhaps the plan itself wasn't consulted on the first set of



amendments. Can that be true? It's a process thing for me, trying to figure out how these things get done. Notwithstanding how minor an amendment it is, it seems odd to me that we would be in a situation where perhaps the plan itself wasn't consulted in the first drafting of amendments. Is that the case?

**The Chair:** Mr. Duguid.

**Mr. Duguid:** No, there's been considerable consultation with all stakeholders on this, including the OMERS board. What does happen, though, is that as legal people get an opportunity to look at bills, they sometimes will identify improvements that can be made or clarity that can be brought, and that's what's happened here. As I've mentioned before, a number of the amendments, as they go through more and more consideration, there sometimes can be improvements to the language. That could probably be said of any piece of legislation.

**Mr. Hardeman:** I want to go on in that same vein for a moment. Obviously, when the original amendment was written, legislative counsel would have been looking at the language in the present legislation. The explanation I'm getting is that the amendment is strictly to make the new language conform with the present situation at OMERS, that different plans have different language and now we find that what we put in the first amendment isn't in the right language for the present plan. Wouldn't the people writing the document have the same information in front of them for both amendments? I find it hard to understand that we can have a whole page of the bill completely amended. Actually, there are only five or six paragraphs on two pages that are not amended from the first time around. Now we have paragraphs 6, 7 and 8, all based on amending the amendment. Wouldn't leg counsel have had the same information in front of them both times, and wouldn't it have been written in the right language if there wasn't an intent for a change?

**Ms. Hope:** Legislative counsel have access to a variety of resources in drafting. As Mr. Duguid has indicated, when a bill gets put together, when all the pieces get put together and people have the opportunity to reflect on the language, from time to time potential improvements in the language are identified to help enhance the meaning of the original.

**Mr. Hardeman:** Not to find fault with legislative counsel, as they do a wonderful job, but—everything has a “but.” I think the parliamentary assistant said he was not going to apologize for having listened to the people as they made presentations and then making amendments to the bill, even though it required a lot of amendments. I respect the government side for doing that. Where my challenge really comes in is that after we've done that, after we listened to the people and asked leg counsel to prepare amendments to deal with what we heard, we then come back with such wholesale changes to the amendments. Did we hear that much different the second time around that would require this many changes? I'm starting to think this has very little to do with changing it because we heard something different the second time around. I think everyone would have to agree that the

presenters didn't change their story nearly as much as you're changing the amendments.

There seems to be a problem here. We seem to have fallen off the track of writing the legislation to what government originally had in mind in accomplishing with this bill. I just can't see the amendments to amendments on issues that seem pretty straightforward. To just say, “Well, we're making all these amendments to deal with the wording. The original OMERS legislation words it in a different way, so we have to put all these amendments forward”—if I could be so bold as to ask, in paragraph 6, what wording was changed to meet this goal for which we said now we have to write it in the language of the legislation?

**Ms. Hope:** There were three changes in paragraph 6. The original made reference to “period of credited service,” and that's been replaced with “period of service,” so the word “credited” has been removed. Then, further on, it said, “employees with credited service,” and it now says, “members with service”—very minor changes.

**Mr. Hardeman:** They are housekeeping, aren't they?

**Ms. Hope:** Yes, they are.

**The Chair:** Ms. Matthews?

**Ms. Matthews:** Now that Ms. Horwath is back, I think you can end your questioning. Anyway, I can't just let this conversation go without making a comment. This is complex legislation. The financial health of thousands of people depends on our doing this right. We don't want to get bogged down in legal arguments later; we'd rather get it right now. The government took this to hearings after first reading for a very important reason, and that was to get the arguments out on the table, to get it right. Coming back after second reading was to look at the amendments we made after first reading. I will never apologize for having an amended, good bill. Far better that than a poor, unamended bill.

**The Chair:** Any further discussion?

**Ms. Horwath:** I too want to thank Mr. Hardeman for so studiously reviewing this particular clause. Notwithstanding the comments just made by the government side, I think many of the stakeholders at this point in the game don't agree that it's a good bill. In fact, unfortunately, many stakeholders are concerned that the government got it wrong and that the bill is not in their best interest. And it's both sides of the table; it's not just one side or the other. People or interests or stakeholders on both sides of this issue are concerned that the government hasn't got it right, notwithstanding the fact that it went to public hearings—which I respect, and I'm happy to have gone through that process, because it is a technical bill; it's difficult and there are lots of important issues that need to be resolved. Nonetheless, I think we're at a stage now where stakeholders are even further apart from the time when the bill went through its first reading hearings. I thought it was important to get that on the record.

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**Mr. Hardeman:** I just want to comment that I agree and I appreciate all the work the government is doing in



the public hearings on the bill and the changes they're making. I would just say that they should have done a lot of that consultation prior to introducing the bill to find out what the stakeholders really wanted and what really needed to be done so we wouldn't have had to have this debate with just politicians sitting around the table but it could have taken place with the stakeholders on the other side. That way, we'd have something before us that was actually going to serve the purpose this bill was intended for, which, if we remember, the minister told us at the first meeting was the devolution of OMERS from the provincial government to the municipalities and the employers, to be operated by an employer and employee board.

I have had the opportunity of sitting through the whole process, and I have to tell you that has not been the main topic of discussion that has taken place at these committees. The issues on which we have had the discussion should have had much more discussion prior to coming here, because it seems we're doing it differently from what we set out to do. I think that's the problem with the bill, not that I object to making wording amendments that will make the bill better. I support that, but at the same time I think a lot more consultation should have been done with all the stakeholders to see if we couldn't come up with a compromise or a bill that would please all the people involved.

**The Chair:** Any further debate? Seeing none, all those in favour of the motion? All those opposed? That's carried.

The next motion, I believe, is being moved by Mr. Lalonde.

**Mr. Lalonde:** I move that subsection 10.1(4) of the bill be amended by adding "participating in the OMERS pension plans" after "any members who are employees of an employer".

**Mr. Duguid:** By way of explanation, this is again a technical amendment. It ensures that there is no confusion about who is eligible to participate in an OMERS supplemental benefit plan. It ensures that you can only participate in an OMERS plan if a member's employer is part of the plan. Again, it's technical language but it's just to ensure that there's no confusion.

**The Chair:** Any further debate, discussion?

**Mr. Hardeman:** To the parliamentary assistant, does that just mean that if you're presently an employee with a participating employer, if you were to change jobs, there's no way you can purchase entitlements and stay in the pension plan? Is that basically what we're talking about?

**Mr. Duguid:** My understanding is that if you're currently employed by an employer who is not participating in the OMERS pension plan supplemental benefits, you can't qualify without having your employer participating.

**Mr. Hardeman:** In the present plan, there is an opportunity to buy back service for different employers. If you were an employee of the federal government for a period of time—I know an individual who worked for the

railroad and he was entitled to buy back service within the OMERS plan. Is this going to eliminate that?

**Mr. Duguid:** Say that again? I'm sorry, I didn't catch—

**Mr. Hardeman:** Someone who was working for a related government-type organization has had the ability to buy back service time in the OMERS plan. If they came into this plan later in life, they can buy back. Not many do it because of the cost of the premium, because you have to pay both halves, but is this eliminating the ability to buy back service time for the pension, or is that something totally different?

**Mr. Duguid:** My understanding is this motion doesn't change anything; it's just clarifying. I may want to refer that to staff to give you a fuller answer.

**Ms. Hope:** Your answer is correct. This doesn't have anything to do with changing anything around buyback entitlements.

**Mr. Hardeman:** Thank you.

**The Chair:** Any further comments, debate? All those in favour of the motion? All those opposed? That's carried.

The next government motion; Ms. Matthews.

**Ms. Matthews:** I move that subsection 10.1(5) of the bill be struck out and the following substituted:

"Same

"(5) In a consent under subsection (4), an employer may consent to provide a benefit or benefits under only one of the following paragraphs:

"1. A benefit described in paragraph 1 of subsection (3).

"2. The benefits described in paragraphs 2 and 4 of subsection (3).

"3. A benefit described in paragraph 6 of subsection (3).

"4. A benefit described in paragraph 7 of subsection (3)."

**The Chair:** Mr. Duguid, did you want to provide some explanation?

**Mr. Duguid:** Yes. It's a difficult one to explain, but this motion indicates that employers can only offer one of the supplemental benefits per local negotiation. That was our original motion. There will be a subsequent motion that will change that to 36-month periods, something that will give some comfort re some of the concerns expressed by some municipalities about getting into one-year agreements or things like that.

This particular motion separates each of the supplemental benefits outlined under section 10.1 to indicate that only one of the benefits can be offered per negotiation. It clarifies that police, fire and paramedics are free to negotiate more than one supplemental benefit in the next round of local negotiations.

That's about as clear an explanation as I can give you. This particular part is more technical. It's the next one that's more substantive in terms of changing the actual original proposition from a collective bargaining session to a 36-month period.



**Mr. Hardeman:** As I understand the problem that was presented to us, it was that if you have it that you can only negotiate one supplementary benefit at a time, we would end up with a lot of one-year contract negotiations so they could get the three benefits in three years. I understand that this amendment would help solve that problem.

Is it also not possible, since we said originally that this was going to be a freely negotiated position, that an employer and an employee may want to negotiate more than one benefit as opposed to a wage increase or something? If we look at the autonomy and the right of the employer and employee to work together on this, if we then say, "But you can only do a little bit at a time"—if the end result is where you want to go, does the government have an interest in making sure we don't get there any quicker, that you take up to four contracts to get to where you say is the appropriate place to go?

**Mr. Duguid:** You're asking that if employees and employers agree that they want to do more than one of these benefits together, would the employer have the option of moving forward in that direction? It's something I haven't personally contemplated, but maybe staff could confirm.

**Ms. Hope:** Even if an employer was willing to provide two at once, it would prohibit that from happening.

**Mr. Hardeman:** I understand why that's being done. Obviously, we heard a lot in the committee presentations about the arbitration process, that a lot of the contracts are settled in arbitration. But on a straight voluntary basis, in defining the difference between a negotiated settlement and an arbitrated settlement, does the government have any problems with a negotiated settlement allowing more than one benefit per contract?

**Mr. Duguid:** I think it's a case of trying to strike a balance. We've heard from municipalities; they have expressed concerns. As we've said all along, we don't believe there will be full take-up of these benefits in the supplementals, but we want to make sure that municipalities have time to adjust. This will give time to adjust. We don't believe there will be full take-up at any time, but this ensures that it will be at least nine years before a worst-case scenario, which we don't believe will occur, could even take place. It gives municipalities a little more time to adjust and should ease some of the concerns about any potential for them to be pressured into negotiating these benefits prematurely.

**Mr. Hardeman:** I understand why it's being introduced, again based on the arbitration. As you just mentioned, it would take up to nine years before a single plan could get to—actually, it would be 12 years before you could get all of them; if there are four three-year contracts, it would take 12 years. We're going to have an awful lot of people who are presently looking at the supplementary plan who are not going to be eligible to get into a full supplementary plan to benefit their pension when they get finished.

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If this was agreed upon by both employer and employee, it would seem that if that's the right place to

go in the future, why not allow that ability for employer and employee, based on negotiated agreements, to have a better pension plan to retire with in the next 12 years, recognizing that no one is going to be eligible in 12 years, and then only after they've contributed long enough in each one of them to actually benefit from it? It seems to me like holding up here for no good reason, providing it wasn't arbitratable.

**Ms. Horwath:** I just want to thank Mr. Hardeman for speaking in favour of free collective bargaining in the province of Ontario.

I do want to make the point that it's unfortunate that the clause before us is one that restricts the right of parties to bargain collectively, free of any constraints. What this does is put constraints on that process of collective bargaining. I don't think that's a good way to go. In fact, that's why we have a collective bargaining process and rules around it.

I have a question, because I'm not sure of the process. In terms of the Ontario Labour Relations Act, for example, which sets out the rules around collective bargaining, and then this legislation, which restricts those rules to these requirements—can I get an explanation of how those two pieces of legislation sit in a pecking order, which takes precedence, and how this can then restrict the right of the parties to bargain freely?

**Ms. Hope:** The question was with respect to the—I apologize. I was—

**Ms. Horwath:** With all respect, you were playing with your BlackBerry, maybe, when I was—

**Ms. Hope:** I'm sorry; I apologize.

**Ms. Horwath:** I was asking the extent to which this legislation supersedes the rights of parties to collectively bargain freely under the Ontario Labour Relations Act.

**Ms. Hope:** This section, together with the section that's amended by the next motion, restricts employer's consent, which in effect restricts the parties to one benefit per 36-month period. That's addressed in the next one.

**Ms. Horwath:** So just in terms of what I would call a pecking order of supersedance of legislation, there is nothing that restricts this legislation from reducing the rights set out in other legislation, that is, the Ontario Labour Relations Act, around collective bargaining?

**Ms. Hope:** This act doesn't speak to the labour relations act. It speaks to restrictions around the ability to access particular benefits under a pension plan.

**Ms. Horwath:** All right. But it does say that you're not allowed to bargain certain increases outside of certain time frames.

**Ms. Hope:** The language of this bill doesn't actually use collective bargaining language, because there may be groups of employees who are unionized and groups of employees who are not unionized. It speaks to the consent of the employer, but I think the effect would place limitations on what employers could agree to throughout a collective bargaining processes.

**Ms. Horwath:** So it's not required to make amendments to the Ontario Labour Relations Act. What it does, though, is that kind of through a back door, more or less,



it restricts the ability of parties to negotiate certain benefits or certain language in collective agreements. That's fine.

This is not a transitional provision, right? This is something that exists in perpetuity from the day this bill is adopted. Is there an opportunity, for example, for this to be changed by the sponsors corporation through its procedures? Or is this forever and ever, until it's changed in the Legislature, a precept of the relationship?

**Ms. Hope:** If the bill is passed, this would be the law until such time as the Legislature would change the bill in the future.

**Ms. Horwath:** Can I ask, through you, Madam Chair, whether the government considered making this something that could be addressed in the future by the sponsors corporation?

**The Chair:** Mr. Duguid?

**Mr. Duguid:** Sorry; making which?

**Ms. Horwath:** Whether this provision included in your amendment was ever considered by the government to be something that should be put into the purview of the sponsors corporation to change at some point in the future?

**Mr. Duguid:** Are you referring to the time period?

**Ms. Horwath:** Yes.

**Mr. Duguid:** Our incentive to put this in was based on concerns expressed by some—I don't know how realistic it was—that with the collective bargaining agreements, there might be pressure to go with one-year agreements simply so somebody seeking a supplemental benefit could get it quicker. I'm not sure how realistic that concern was, but at the same time, it was something we wanted to allay. Realistically, to be able to negotiate one of these benefits every 36 months—it's probably unrealistic to think that at the end of nine years they're going to be there, because of the costs to the members themselves. But we felt it was a reasonable way to bring about some level of comfort to municipalities.

**Ms. Horwath:** I understand that, with all due respect to the parliamentary assistant. But what I'm getting at—not dissimilar to one of the issues Mr. Hardeman was trying to get at—is that if at some point in the future it might be of interest to both parties to do away with the 36-month provision, sponsors corporation should be able to do that instead of having to come back to the Legislature and change that piece of legislation. My question is, did the government consider the opportunity for the sponsors corporation to make such a change as it deals with the devolved plan, let's say 20 years from now or 10 years from now or five years from now? Did you consider at all that that might be something that both parties might want to consent to in the future?

**Mr. Duguid:** We felt that to provide a level of comfort, this should be done up front. Thinking that far ahead, I suppose you never know what can happen between different parties. But we don't think that a 36-month period of time to bring in better benefit changes—let's face it: How often have benefit changes taken place in these pension plans? They're very, very rare. This is

not something that I think would be prohibitive to anybody. I don't anticipate it would become an issue, but I suppose you can never say never, looking into the future.

**Ms. Horwath:** Well, unfortunately, the government said never.

**Mr. Hardeman:** On the same topic, if I could ask the parliamentary assistant, the next amendment says the employer “may consent” as opposed to “would be obligated.” That would take it away from the arbitration process. It does the same thing. It says it can offer any benefit, but only one every 36 months. I can see that, in the collective bargaining, that may be a restriction. If this is good news for both employer and employees, an employer may very well want to, in negotiations, offer benefits in the pension, as opposed to cash today. Is there a connection between the amendment we're presently dealing with and the next one? Would not doing the next one in fact hinder what we're doing here? The next amendment is to section 6.

**The Chair:** Mr. Hardeman, you're going to have to talk about the one that's in front of us right now. I know you want to leap to the next one, but you're really going to have to confine your conversation to the motion that's in front of us.

**Mr. Hardeman:** Well, it's a question on this motion. I want to know what happens to this motion if the next motion isn't passed, I guess to understand what we're doing here. We're talking about making sure that the negotiations restrict pension benefits in supplementary plans to one per contract, and one per every three years if it's not a three-year contract; so it could be two contracts, but only one every three years. In the next one you say an employer “may,” but at the same time, it restricts that to one every three years. Is that going to be connected to this one?

**Mr. Duguid:** My understanding is that this motion just clarifies wording. It's the second motion that's more substantive in terms of making the change. So if we were to pass this and not pass the other one—and staff can interject if I'm wrong—this would still be an improvement in wording, but we would just maintain what we had in the original bill, which was that you can negotiate a benefit per collective bargaining negotiating period.

**1130**

**The Chair:** Any more debate? Seeing none, all those in favour of the motion? All those opposed? That's carried.

The next is a government motion; Mr. Rinaldi.

**Mr. Rinaldi:** I move that subsection 10.1(6) of the bill be struck out and the following substituted:

“Same

“(6) An employer may consent to provide an additional benefit listed in any of paragraphs 1 to 4 of subsection (5) that the employer has not previously consented to provide, but not until at least 36 months has passed since the employer previously consented to provide an additional benefit under subsection (5) or this subsection.”



**Mr. Duguid:** I don't know if further explanation is necessary. This is what we were talking about. This ensures that a supplemental benefit can only be extended once per 36-month period.

**Mr. Hardeman:** I just want to reiterate what I said. It seems to me that everyone would be better served with not passing this amendment. This is strictly that an employer "may," and it seems to me that we haven't heard anybody from the employee side say they would object to getting the benefits quicker. Since this is a discretionary ability of the employer to give benefits more than one per every three years, that seems to me totally appropriate, as opposed to being forced to do it through arbitration. Without this, it does exactly what all parties said that they wanted done, so I would suggest not supporting this motion.

**The Chair:** Any further debate?

**Ms. Horwath:** I actually agree with the comments just made by Mr. Hardeman. The principle of free collective bargaining is being usurped by this particular amendment in conjunction with the previous one. Just on the principle, I can't support it. Many mitigating factors will affect the extent to which employee groups seek the maximum in terms of what's allowable under the legislation, not only in terms of the various pressures and the various items they might be asking for in any particular bargaining session, but also the extent to which employees are able to be in a position to put their hand in their own pockets to pay for their portion of any benefits. I just think this is not necessary and not supportable..

**Ms. Matthews:** I would just like to comment on this. We heard from a lot of municipalities that they're concerned about the costs that are going to accrue as a result of these changes. This is an amendment that I think addresses significantly some of the concerns of AMO and of my city of London. I think it's a prudent measure and I am happy to support it, because I think it addresses, to some considerable extent, those concerns.

**Ms. Horwath:** It's interesting. I recall some of the presentations from the municipal sector, and at all turns, they were asking the government to provide them with its figures in regard to what this would cost municipalities, and at no time did the government acquiesce. In fact, all though the hearings, the government maintained that the municipalities were bringing forward the worst-case scenarios and that they would never even contemplate that the kinds of scenarios being brought forward would have any basis in reality. I find it interesting. I don't understand how on the one hand, when those presentations were being brought before the committee, the government was saying this wasn't going to be the case, yet now government members are saying that this amendment is put here to acknowledge and recognize that what AMO and municipalities are bringing forward is in fact a problem.

I would just like to understand, from the government's perspective, whether they think it is or it isn't a problem, because we're getting mixed messages as to whether or

not the scenarios brought forward by AMO are likely or not likely.

**The Chair:** Mr. Duguid, did you want to respond to it?

**Mr. Duguid:** I have nothing further.

**The Chair:** Ms. Matthews?

**Ms. Matthews:** I'll quickly respond. We acknowledge that there may be additional costs to municipalities as a result of this. We're not so naïve to think that there are no additional costs that municipalities and the property taxpayers will have to pick up as a result of this. What we continue to argue is that the numbers that were put before us do assume absolute worst-case. This amendment just ensures that there will be a significant period of time to adjust to potential increases.

**Mr. Hardeman:** Just in response to the last comment, I have real concerns. The minister was very clear in his letter to every municipality in this province that this legislation would not impose any cost or any pension liability on any municipality—any. That was what he said. That's what this legislation would do. Now I hear the government side saying, "Yes, we acknowledge that there are costs." Now I'm getting very concerned that with this acknowledgement, we have not seen any direction as to what that cost might be.

Having said that, I just want to point out—and maybe I don't understand this amendment—that it is not an obligation upon municipalities. It says, "An employer may consent" to give benefits, but no employer would be obligated to give benefits.

Every municipal presentation that came before committee was based on the fact that the police and fire services are essential workers and cannot strike, so if they can't come to an agreement, an arbitrator makes the decision. This section would not give the arbitrator that decision, because the employer "may" do it. I don't see the challenge with giving the employer and the employee the right to negotiate something that will be available three years from now, but it's quite obvious that the government has a different view, and I respect their view—somewhat.

**Mr. Duguid:** Just to be clear, there's no direct cost to municipalities when this legislation passes. What we're acknowledging, what I think we all acknowledge, is that this legislation gives emergency workers an ability to negotiate further for some supplemental pension benefits, something that we think is appropriate, something that emergency workers have countrywide in other provinces—not all provinces, but many—something that is recognized under the Income Tax Act. We don't have a problem with that. It doesn't necessarily mean that municipalities are going to have further expenditures. It may well be that as they negotiate with their emergency workers, there will be a compromise between a wage increase versus an enhancement to their pension benefits. That will be worked out through a number of years of collective bargaining agreements, and yes, arbitration plays a role in that as well. There's no question.

Could there be some pressures as a result of this legislation on municipalities in future collective bar-



gaining? I would suggest, when you look at the whole scheme of things and you look at the cost of salary increases in general, that those pressures are relatively minor. But realistically, yes, there may be some pressures on municipalities over time. As I said, it may be trade-offs with salary increases or other benefits. I think one of the presentations before us compared one of the benefits to an eyeglass benefit in terms of cost. It's a cost, yes, but it's something that, in the whole scheme of things, should be manageable.

**The Chair:** Any further speakers? Seeing none, those in favour of the motion? Those opposed? That's carried.

The next motion is Mr. Hardeman's.

**Mr. Hardeman:** I withdraw the motion.

**The Chair:** It's being withdrawn, so we'll move on. Because the next motion has been stood down, we would move on to the next NDP motion, page 16.

**Ms. Horwath:** I've just got to get a drink of water before I start reading this motion. Excuse me. It's a long one.

1140

I move that the bill be amended by adding the following section:

"Optional increases, other sectors

"10.2(1) The sponsors corporation shall amend the OMERS pension plans to provide optional increases in benefits for members of the primary plan who are not employed in the police and fire sectors.

"Same

"(2) The amendment required by this section shall be made within 24 months after the day this section comes into force.

"Method of calculating benefits

"(3) A supplemental plan established under this section shall make provision for all of the following:

"1. An annual benefit accrual rate that is 2.0 per cent for members under the supplemental plan.

"2. The payment of pension benefits to members of the supplemental plan in which the annual amount of pension is not reduced because a member retires before the member's normal retirement age of 65 years if, at the date of retirement, the sum of the member's age, counted in full years and months, plus credited service and eligible service, counted in full years and months, equals at least 85 years.

"3. The pension benefits payable to members under circumstances described in paragraph 2 shall begin to be paid not more than 10 years before the member's normal retirement age.

"4. The payment of pension benefits to members of the supplemental plan in which the annual amount of pension is not reduced because a member retires before the member's normal retirement age of 60 years if, at the date of retirement, the sum of the member's age, counted in full years and months, plus credited service and eligible service, counted in full years and months, equals at least 80 years.

"5. The pension benefit payable to members under circumstances described in paragraph 4 shall begin to be

paid not more than 10 years before the member's normal retirement age.

"6. The pension benefit payable to members of the supplemental plan is calculated based on the average annual earnings of the members over a period of credited service of three years, but the average may be less than three years for employees with credited service of less than three years.

"7. The pension benefit payable to members of the supplemental plan is calculated based on the average annual earnings of the members over a period of credited service of four years, but the average may be less than four years for employees with credited service of less than four years.

"8. The option for a member to pay all of the contributions to the supplemental plan for a benefit described in paragraph 1, 2, 4, 6 or 7 in respect of the member's pensionable service before the day the employer decides to provide the supplemental plan.

"Consent of employer

"(4) A supplemental plan established under this section shall not authorize a contribution in respect of or provide for a type of benefit for any members who are employees of an employer unless the employer consents to provide that type of benefit to the members.

"Same

"(5) In a consent under subsection (4), an employer may only consent to provide,

"(a) a benefit described in paragraph 1 of subsection (3);

"(b) the benefits described in paragraphs 2 and 4 of subsection (3);

"(c) a benefit described in paragraph 6 of subsection (3); or

"(d) a benefit described in paragraph 7 of subsection (3).

"Same

"(6) An employer may subsequently consent to provide an additional benefit listed in any of clauses (5)(a) to (d) that the employer has not previously consented to provide."

**The Chair:** Would you like to provide some background?

**Ms. Horwath:** Sure. I think it is apparent that what this basically does is address the government's omission of the as-of-right ability of a number of employee groups to negotiate supplemental plans. This really gets rid of the two-tiered nature of the bill. In effect, this amendment addresses what we heard from stakeholders who were concerned that the government has gone forward with a bill that treats employee groups differently in so far as it, as of right, requires within 24 months certain groups to be in a position of the negotiation of supplemental agreements, while other groups are told that their ability to negotiate supplemental agreements is reliant upon a two thirds majority vote of the sponsors corporation. This amendment basically enshrines in the same way the right of employee groups other than the police and fire sector to be in a position to negotiate those



supplemental agreements without having that supermajority imposed upon them.

If anyone is interested in fairness, in terms of legislation that treats all employee groups fairly, a fundamental requirement is that this amendment would be supported, because it would enable all people who are employees of the plans to be on the same footing in regard to the ability to negotiate supplemental agreements. In effect, without this amendment, a whole group of employees is being put through a separate process that really requires a huge hurdle to be overcome, and that is the supermajority that's been put on the sponsors corporation in regards to the provision of supplemental plans.

**Mr. Hardeman:** I have a bit of a problem with this. I support number 1, because we heard a lot of presentations about the accrual cap put on the lower-wage earners at 1.6% as opposed to the legislative right to go to 2%. The presenters from CUPE told us, "Why would you set the limit of the lowest-paid workers lower than the allowable amount to get a reasonable pension when they retire?"

Having said that, the whole amendment putting forward the supplementary plans for everyone goes against the grain. I've been speaking to the fact that I don't think the government prepared very well for the bill as it's put forward, because it goes in directions that the original intent was never meant to go. This motion does exactly the same thing. If you were going to provide supplementary plans for everyone in the municipal service, all the stakeholders should have had an opportunity to come and speak to the impact of that and the need for that and the justification for it. I don't think that has been done, so I think it would be somewhat foolhardy to all of a sudden pass an amendment like this, to say, "We've heard the government's justification for having supplementary plans for the emergency workers, and we think that to be equal, we should just impose this upon everyone or have everyone have a supplementary plan without any information as to what impact that would have on local government or on the province as a whole."

I can't support this resolution for that reason, although I do agree with the change of the cap to allow it to go to 2%.

**Mr. Duguid:** I appreciate the motives behind this particular motion, but I can't support it. When we set out some time ago on this legislation, we looked at the uniqueness of emergency workers in terms of the jobs they do. It doesn't belittle the work that other members of the OMERS pension plan do, but it acknowledges that our firefighters, our police and our EMS workers do have a unique and difficult job that requires some consideration.

We're not unique in doing this. Supplemental benefits exist for these sectors in other places across the country—in fact, I think supplemental benefits already exist within Ontario in some areas; Toronto has some form of special benefits, in terms of retirement consideration—because of the uniqueness of these professions. That's

what we set out to acknowledge in this legislation. To extend that carte blanche across the board is going well beyond our intention when we set out with this legislation.

Firefighters and police have been working on these particular provisions for probably 10 years or more, so this isn't something new. It's something that all parties and all governments have had an opportunity to consider for some time. The idea of extending these same provisions across the board is something that's really just come up. In fact, there has not been, as far as I know, demand for these supplemental benefits in any of these other sectors. That's not to say that in the future, demand won't arise. If it does, then there's an opportunity to work through the new sponsors corporation and try to achieve that. But I'm not prepared at this time to front-end this, given that it is not something that we originally had set out to do.

1150

**Ms. Horwath:** I'm just a little bit confused in terms of what the intentions of the government were in bringing forth this legislation. It seems to me that we've been told from day one that the intention of the government with bringing forward this legislation was to devolve the governance of OMERS to the stakeholders. Now I'm hearing from the parliamentary assistant that in fact there was a different agenda, which is one I don't particularly have a problem with, in regard to making sure that the police and fire sector, which includes paramedics, has the ability to negotiate supplemental plans.

Now I'm even more confused about what the government was trying to do when they first decided to table this bill in its first reading. My understanding was that it was to devolve, but now it's really to make sure that police and fire are able to negotiate their supplemental plans. All I would say is that, in looking at OMERS as a plan that covers all workers in all sectors, it's inappropriate in the devolution to stakeholders for any government to say, "This group has to go through this process to achieve supplemental plans, whereas this group has to go through a whole other process, which is not likely to actually result in success."

Again—and I've maintained this through all readings, and stakeholders will know this—I absolutely support and am happy to see the ability of police and fire sector workers to obtain their supplemental plans. A lot of the uniqueness of their situation is already acknowledged and addressed through other pieces, particularly around the 2.33% and other issues like that. I agree with that wholeheartedly. All I'm saying is that if the government had wanted to put together a two-tier system, then they should perhaps have even thought about splitting and making two separate plans. Instead, the Legislature is going to be in the untenable position of having a bill before it that says, "This group of workers is able to negotiate supplemental agreements. In fact, their employer is required to do that within 24 months of the passing of this bill. But this other group of workers—no such luck. In fact, you have to jump over extra hurdles so



that it becomes well nigh impossible for you to ever obtain a supplemental plan.”

It's not just a matter of whether or not police and fire-sector workers are entitled, deserve or are in a unique position and all those things to negotiate supplemental plans that reflect their working lives, their working realities, their contributions to the community, to all communities. But I think it's equally important to acknowledge that other workers also make contributions to communities. To prevent them from having the same level playing field in regard to their ability to negotiate supplemental benefits based on their working realities, based on their contributions to the community, based on their parameters that are provided, whether it's through the federal Income Tax Act or other provisions, I think is inappropriate and is not fair-minded at all. In fact, it's extremely unfair.

This amendment I'm putting forward goes directly to the government's desire to put a two-tier system into place that treats workers in different ways, not in the specifics around what they're able to obtain but in the process that requires a particular group of workers to jump extra hurdles, which is simply unfair and unjust in regard to the process.

**The Chair:** Any further discussion? All those in favour of the motion? All those opposed? That's lost.

Our next motion has been stood down, so we move on to section 12. Shall section 12 carry? All those in favour? All those opposed? That's—

**Ms. Horwath:** Chair, can I ask that section 12 of the bill not be carried, or can we get a recorded vote on section 12? Sorry. You know what? I'm doing the wrong thing. I'm just looking at my notes. I'm doing the wrong thing. That's fine. Can we get a recorded vote on section 12 anyway?

**The Chair:** If you want one, we can have one.

**Ms. Horwath:** Sure.

**The Chair:** I'll go back again. On section 12—Mr. Lalonde, you had a question?

**Mr. Lalonde:** On a point of order, Madam Chair: When we voted, was it for section 12?

**The Chair:** We're about to. Section 12 has not been amended. I can't deal with section 11 because we have a motion that has been stood down.

**Mr. Lalonde:** But after the debate we had on the NDP motion—

**The Chair:** It was on section 10.2. It lost. That's a new section, so I'm moving on.

**Mr. Lalonde:** I thought I had heard section 12.

**The Chair:** I am on section 12 now.

**Mr. Lalonde:** Okay, thank you.

**The Chair:** Mr. Duguid?

**Mr. Duguid:** Just very briefly, I will be voting against this section for the following reason. While I understand why this cap provision was originally put in, it makes this pension plan inconsistent with most others. We don't see the need to have that cap written in legislation. There are other things that will ensure that the integrity of this pension plan remains in place. There are a lot of other

protections within it. Like Ms. Horwath, I, and I expect my colleagues, will not be supporting this section and will be voting against it.

**The Chair:** Any more discussion on section 12? Seeing none, a recorded vote has been requested.

### Nays

Dhillon, Duguid, Hardeman, Horwath, Lalonde, Matthews, Rinaldi.

**The Chair:** That's lost.

On section 13, there's a government motion; Mr. Duguid.

**Mr. Duguid:** Is this motion 18?

**The Chair:** Yes.

**Mr. Duguid:** I move that section 13 of the bill be struck out and the following substituted:

“Cap on contributions by employer for increased benefits

“13(1) If, under a supplemental plan, a municipality or local board may provide an optional pension benefit for its employees in respect of which the annual benefit accrual rate is greater than 2.0 per cent and less than or equal to 2.33 per cent (the ‘increased benefit’), the municipality or local board may make contributions to the plan for the increased benefit in respect of the employees’ service on or after the date on which the municipality or local board decides to provide increased benefit, but not in respect of service before that date.

“Same

“(2) Nothing in subsection (1) prevents an employee from making payments to an OMERS pension plan in respect of the service of the employee before the date on which the municipality or local board decides to provide the increased benefit.”

My understanding is that this is similar to motions 9 and 10. It's considered a technical amendment to ensure that the OMERS pension plans continue to be administered correctly. It's amending the language to make it consistent with the OMERS plan. If there's additional information sought, I'd have to refer it to staff.

**The Chair:** Any comments or questions?

**Ms. Horwath:** I just want to be clear: The initial language was amended to the language that's in the bill at second reading, and then this amends that. Just to understand, is there any substantive change from the most recent amendment?

**Ms. Hope:** No, there is not.

**Ms. Horwath:** Can you just highlight for me really quickly where the wording changes actually are?

**Ms. Hope:** In about three places in the section, there was originally the phrase “pensionable service,” and that is replaced with “service,” much as we did earlier. Also, the word “contributions” was replaced with “payments.” In one place, the phrase “the plan” was replaced with “an OMERS pension plan”.

**Ms. Horwath:** Thank you.



**The Chair:** Any further comments or questions? Seeing none, shall the motion carry? All those in favour? All those opposed? That's carried.

Shall section 13, as amended, carry? All those in favour? All those opposed? That's carried.

Section 14; Mr. Dhillon.

1200

**Mr. Dhillon:** I move that section 14 of the bill be amended by striking out "In determining the required contribution rate for the primary pension plan" at the beginning and substituting "In determining the required contribution rate for the primary pension plan and for any retirement compensation arrangement".

**Mr. Duguid:** Just by way of explanation, it's a further strengthening to ensure that if rebound costs can affect the main plan, they would still need to be borne by the supplementary plan members. It's probably not a major change but it's just a further strengthening.

**The Chair:** Any further comments or questions? All those in favour of the motion? All those opposed? That's carried.

Shall section 14, as amended, carry? All those in favour? All those opposed? That's carried.

Shall section 15 carry? All those in favour? All those opposed? That's carried.

Ms. Horwath, you have page 20.

**Ms. Horwath:** I move that subsection 16(2) of the bill be amended by striking out "for the purpose of carrying out its objects under this act" at the end and substituting "to fulfill its objects under this act".

**The Chair:** Did you want to speak to it?

**Ms. Horwath:** This is just one of those amendments that would reflect some of the issues around accountability of governance.

**The Chair:** Any other discussion?

**Mr. Duguid:** I'm looking at this. Can you explain what the difference is between "for the purpose of carrying out its objects under this act" and "to fulfill its objects under this act"?

**Ms. Horwath:** Again, this is related to some of the other NDP motions that are coming later around the governance issues and the relationship between accountability of "sponsors corporation" and "administration corporation." So although it's here in the process, it refers to some of those issues.

**Mr. Duguid:** I appreciate that explanation. I don't feel comfortable, though, with the change. I think we want to make sure that there is a separation between the two corporations and I'm a little concerned that even small changes like this could be confusing down the road in terms of interpreting the roles of the two, the administration and the sponsors corporations.

**The Chair:** Can I try and be helpful? Since there are a couple of NDP motions that were stood down for more clarification, do these have anything to do with the further clarification we're looking for after lunch that would help people vote on this?

**Ms. Horwath:** No, these are more for when we get into the administration and sponsors corporations.

**The Chair:** Okay. Any further debate? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

You have the next amendment.

**Ms. Horwath:** I move that section 16 of the bill be amended by adding the following subsection:

"Same

"(3) The administration corporation shall give the sponsors corporation such information, reports and documents as the administration corporation considers necessary and appropriate in order for the sponsors corporation to fulfill its objects under this act."

You'll see how that previous motion addresses language in this motion. Again, this is the extent to which the sponsors corporation should be able to have access to information that is being used by the administration corporation in its business and decision-making and allow for that level of oversight that we heard that some stakeholders were concerned about not existing currently and wanting that to exist in the future. It's certainly a philosophical debate. It's a perspective debate, as it relates to whether or not any organization or group would want to see that level of oversight, but certainly large—numbers-wise—stakeholders in this OMERS pension plan from the employee side are very concerned about transparency and accountability, and see that from their perspective the oversight of the administration corporation by the sponsors corporation is an appropriate way of them ensuring that the interests of their members and the plan members are being looked after.

**Mr. Duguid:** We feel there is already adequate coverage for the production of information between the two corporations, so we won't be supporting this.

**The Chair:** Any further debate? All those in favour of the motion? All those opposed? That's lost.

Shall section 16 carry? All those in favour? All those opposed? That's carried.

Ms. Horwath, you have the next motion.

**Ms. Horwath:** I move that section 17 of the bill be amended by adding the following subsection:

"Consultation with sponsors corporation

"(3) The administration corporation shall not make a determination under subsection (2) without first consulting with the sponsors corporation."

**The Chair:** Did you want to add anything?

**Ms. Horwath:** As I bring forward these amendments regarding the governance, it's the same issue. It's the issue of accountability, it's the issue of transparency, it's the issue of information flow and, in some cases, the timing of information flow. This motion basically indicates a requirement for the administration corporation to consult with the sponsors corporation in certain milestones in its process.

**Mr. Duguid:** These are similar to motions moved in the previous hearings. Our concern is that they have the potential to blur the responsibilities of both the administration and the sponsors corporations, so we won't be supporting this.



**The Chair:** Any further discussion? All those in favour? All those opposed? That's lost.

Shall section 17 carry? All those in favour? All those opposed? That's carried.

Shall section 18 carry? All those in favour? All those opposed? That's carried.

Ms. Horwath, you have motion 23.

**Ms. Horwath:** I move that subsection 19(2) of the bill be struck out and the following substituted:

"Reports and recommendations

"(2) The actuary shall give to the administration corporation and the sponsors corporation such information and reports as either corporation may request, and shall make such written recommendations to the administration corporation and the sponsors corporation as he or she considers advisable for the proper administration of the pension plans."

If I may, it's the old adage that information is power. When it comes to the ability of members of this pension plan to feel assured or their representatives to feel assured that the plan is being administered appropriately, the provision of such information to the sponsors corporation representatives is extremely important. This motion basically just requires any information that the actuary provides the administration corporation to go to the sponsors corporation as well as for information to flow on request.

**The Chair:** Any further comments or questions?

**Mr. Duguid:** We feel this is excessive and, again, it blurs the responsibilities of the two corporations.

**Mr. Hardeman:** I guess I'm somewhat in support of this amendment. I find it hard to understand why information, as it relates to the financial stability of the plan, would not be available to everyone involved with the plan, both in the sponsoring and in the administrative section of it. I would think that in both cases, both administrations at times would need this information to make their decisions as to how they're going to proceed with the plan. I wasn't sure that it's necessary, but I really see a problem with suggesting that it would be inappropriate to have in the legislation that this information would be available to everyone involved with the administration and the structure of the plan.

**The Chair:** Any further comments or questions?

**Mr. Hardeman:** If it was never talked about, Madam Chair, I wouldn't have any problem not talking about it. But when all of a sudden it's before us and then to pass a motion that would suggest the information would not be available to one of the two players in this pension plan seems hard to justify.

**The Chair:** No further comments or questions? Those in favour of the motion? Those opposed? That's lost.

Shall section 19 carry? All those in favour? All those opposed? That carries.

Shall sections 20 and 21 carry? All those in favour? All those opposed? That's carried.

Ms. Horwath, you have motion 24.

1210

**Ms. Horwath:** I move that subsection 22(3) of the bill be struck out and the following substituted:

"Fiduciary duty of sponsors corporation

"(3) The sponsors corporation and its members are fiduciaries in relation to members and former members of the OMERS pension plans and others entitled to benefits from the OMERS pension plans."

Again, this goes to the issue of the distinction between whether you are dealing with a plan that is more on the corporate model or more on a trustee model. As technical as that whole debate can be, the issue really is the extent to which the sponsors corporation, once again, has some ability to have a say in or have oversight over—or requires accountability of—the decisions made by the administration corporation. This particular amendment speaks to the extent to which the sponsors corporation, then, has a fiduciary responsibility, in its decision-making around the plan and changes to the plan, to the actual members of the plan.

**Mr. Duguid:** The concern that I have with this motion is that fiduciary duties lie with the administration corporation and the members of the administration corporation. To make sponsor reps responsible to the OMERS corporation with fiduciary duty almost places them in a bit of personal quandary, in that they're on the sponsors committee representing other groups. To give them that fiduciary responsibility, I think, would be an unwise thing to do and an unfair thing to do to them. The sponsors committee will work, but as a group that represents other interests. While we hope that sponsors members will be able, from time to time, to consider the best interests of the fund ahead of those who may have sent them there, they also have a role of representing those groups. From time to time, there could be conflicts between a fiduciary duty to OMERS and the particular group that may have sent them to the sponsors corporation, so we don't want to place them in that position.

**The Chair:** Any further debate? Seeing none, those in favour of the motion? Those opposed? That's lost.

Shall section 22 carry? All those in favour? All those opposed? That's carried.

Section 23; Ms Horwath.

**Ms. Horwath:** I move that section 23 of the bill be amended by adding the following subsection:

"Same

"(1.1) The sponsors corporation shall ensure, in any bylaw adopted under subsection (1), that the entitlement of organizations that represent employees to choose members of the sponsors corporation shall be allocated among those organizations based on the number of employees who are members of the OMERS pension plans that each organization represents."

I think the motion is very clear. It speaks to the issue of representation.

**The Chair:** Any further debate?

**Mr. Duguid:** I understand the intent of the motion. In fact, one of the considerations in the various motions we've put forward on the membership of the sponsors corporation has been the representation, the number of people that members may represent. But that can't be the only consideration. To lock it in as saying that this has to



be the only consideration, I think, would probably not be in the best interests of striking a proper balance of representation on these particular committees.

**Mr. Hardeman:** I'm just wondering about the intent of this. It's strictly that the members of the corporation would be based on proportional representation. How would this resolution allocate that if there's one member and there are different organizations? Do you intend to change the size of the board in order to accommodate that everyone is represented?

**Ms. Horwath:** The motion doesn't speak to the details of the structure but rather the principle of proportionality. It would be up to the sponsors corporation to ensure that proportionality is enshrined, whether it's through individual proportional numbers or whether it's the force of the vote or whatever. So although this motion doesn't speak specifically to how that would be achieved, what it does is to say that the principle of proportionality has to be what guides the sponsors corporation.

**Mr. Hardeman:** I guess my concern is that if this was passed, it seems quite possible that it's not achievable, so I don't know whether it's appropriate to put in a section of the bill that in fact can't be done. If one of the groups is very large, and in order to get the type of representation from that group to the smallest group in the association, you would have trouble getting one from everyone and not change the size of the board. So if there's nothing being put forward to change the board, then I think this could be unachievable, and I think it would be inappropriate to pass it.

**The Chair:** Any further comments, questions? Those in favour of the motion? Those opposed? That's lost.

Shall section 23 carry? All those in favour? All those opposed? That's carried.

Ms. Horwath, you have the next motion.

**Ms. Horwath:** I move that section 24 of the bill be amended by adding the following paragraphs:

"1.1 To supervise the administration corporation.

"1.2 To oversee the administration corporation's operations."

**The Chair:** Any discussion?

**Mr. Duguid:** Yes. We'll be opposing this for the same reason as many of the others. We feel it does in fact blur the responsibilities of the administration corporation and the sponsors corporation.

**The Chair:** Any further discussion?

**Ms. Horwath:** Not to belabour the point, but the parliamentary assistant is correct in his view of what this motion does. Basically, it puts in that extra oversight that has been the philosophical debate among plan members as to whether or not that's the right model. But this is true to that other model, which says that there should be some oversight of the admin corporation by the sponsors corporation.

**The Chair:** No further debate? All those in favour of the motion? All those opposed? That's lost.

Shall section 24 carry? All those in favour? All those opposed? That's carried.

Section 25; Ms. Horwath.

**Ms. Horwath:** I move that clause 25(2)(d) of the bill be struck out and the following substituted:

"(d) require the administration corporation to provide the sponsors corporation with such reports, opinions, agreements, information or documents in its possession or control, whether prepared by the administration corporation or any entity it controls or by a third party, as the sponsors corporation requires in relation to the objects or activities of the administration corporation;

"(e) subject to any limitations in this act or the Pension Benefits Act, amend the OMERS pension plans at its own initiative or on the recommendation of the administration corporation;

"(f) consult with the administration corporation on the actuarial methods and assumptions to be used for the purposes of administering the pension plans and pension funds;

"(g) require that the administration corporation provide it with any reports and information concerning the performance of any agents or advisors retained by the administration corporation;

"(h) establish procedures for the retention of agents and advisors for both the administration corporation and the sponsors corporation;

"(i) require that the administration corporation provide it with any information about any corporations incorporated by the administration corporation or any investments held in any manner by the administration corporation;

"(j) require that the administration corporation provide it with copies of any bylaws or resolutions passed by the Administration corporation under subsection 35(3);

"(k) request that the administration corporation, or any entity through which the administration corporation acts or invests, explain, consider or reconsider any policy, arrangement, plan or commitment contract;

"(l) retain advisors to assist it in carrying out its objects;

"(m) seek the advice, opinion and direction of an appropriate court on any manner connected to the OMERS pension plans;

"(n) commence or defend such legal proceedings as it considers necessary; and

"(o) undertake other acts it considers necessary or proper in relation to the OMERS pension plans."

**1220**

This basically sets out a different set of activities or objectives of the sponsors corporation in terms of what it would require from the administration corporation, and in the interest of trying to ensure that there is a level of oversight, a level of accountability built in.

Members of committee will recall that the Borealis issue was raised in regard to discomfort that members of the OMERS pension plan currently have around how decisions have been made in the past, and wanting to see some of this accountability built in for the future, as we devolve the pension plan. So this basically puts that level of oversight in place and raises the comfort level for those members who are so concerned that any activity



undertaken by the administration corporation is disclosed in a timely fashion to the sponsors corporation.

**Mr. Duguid:** This is similar to a motion that the committee defeated during our hearings after first reading. It was stated then that it runs counter to the notion that fiduciary and sponsor roles should remain distinct and separate. So we won't be supporting this one either.

**The Chair:** Further debate? Seeing none, all those in favour of the motion? All those opposed? That's lost.

The next motion is yours, Ms. Horwath.

**Ms. Horwath:** I move that subsection 25(3) of the bill be amended by adding "Subject to subsection (4)" at the beginning.

Again, Madam Chair, this relates to the next motion, so I don't know, process-wise, how that works. But I guess we'll see whether this one passes, and if it does, maybe the next one will too.

**The Chair:** Okay. Any discussion on this item?

**Mr. Duguid:** Just the same argument about a blurring of responsibilities, Madam Chair.

**The Chair:** Okay. Shall the motion carry? All those in favour? All those opposed? That's lost.

**Ms. Horwath:** I move that section 25 of the bill be amended by adding the following subsection:

"Meetings

"(4) The sponsors corporation shall meet at least five times a year for the purpose of considering any issues related to the OMERS pension plans."

This was just a building-in of time frames for meeting to ensure that the sponsors corporation was required to meet to address the issues of the plans. The previous motion was one that required those meetings to occur as well. So this is basically a way of making sure that the legislation governing the OMERS pension plan clearly sets out an obligation of the sponsors corporation to meet on a regular basis.

**Mr. Hardeman:** I support the notion. We should have some direction as to the meeting of the sponsors corporation, because it would seem to me that one of the problems that the OMERS presentation pointed out when they were here in front of the committee was the fact that, under the present structure, any changes to the plan had to go through the provincial government, and that took too long. It was quite cumbersome and they wanted something whereby changes could be made in a more appropriate manner. If the bill does not include any direction on when the sponsors corporation must meet, the time delay may in fact be even larger than it is under the present structure.

So I support the notion of meeting on a regular basis or meeting more often. In some of the presentations it was pointed out that the sponsors corporation may meet once every three years, and that, to me, would be unacceptable. At the same time, I think that the motion put forward here by the New Democrats is based on the other motions having passed, which included the oversight of the administration corporation; in fact, they would need to meet five times a year in order to do a

sufficient job of that. But since they were not passed, I think it would likely be inappropriate to mandate that they must meet five times a year. I wouldn't envision changes of the plan being required quite that often. As pension plans go, they don't change that much, so I can't support five times a year, but I do think we should look at making sure they are asked to meet at regular intervals.

**The Chair:** Ms. Horwath.

**Ms. Horwath:** In terms of clarifying why they would need to meet five times a year, had all the other amendments carried and they had all these other duties and responsibilities in terms of oversight of the administration corporation, then of course they'd probably need to meet about five times a year. You can see how the logic then flows through all the amendments we've put forward in regard to the changed purview of the sponsors corporation.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** The flow of the amendments may be logical, but we're still not going to support it. We think it's unduly restrictive. The sponsors corporation is not limited in any way from meeting when they need to meet, and I would think there's no need to have them meet statutorily five times a year. In the first year, they may meet a number of times. They may find they don't need to meet as much in the second and third years, and to have them meet just for the sake of fulfilling the statute would probably not be a wise thing to do.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** A question to the parliamentary assistant: The intent of the bill is that the sponsors corporation will not meet as often as the administrative corporation would meet, but what would generate the meeting of the sponsors corporation? Would it be at the request of the administrative corporation? What generates the ability for them all to get together to make changes to the plan? Who asks whom? It's quite clear that we've divided the two organizations up and there is no close relationship between the two. What generates the meeting of the sponsors corporation?

**Mr. Duguid:** The sponsors corporation itself would have to meet in the transition period. I expect they will probably meet more frequently in the beginning, but they will meet when they choose to meet. As far as I know, the administration corporation may be able to ask them to meet; I can't imagine when. Maybe staff might be able to provide a little more clarity on that for you.

**Ms. Hope:** There are indeed provisions in the bill that would require the sponsors corporation to meet under certain circumstances; we're actually hunting to put our finger on that.

**Mr. Hardeman:** There is a place where they must meet?

**Ms. Hope:** There are certain circumstances under which they must meet. They also have to pass an annual report, and there are certain things they will have to do, as a corporate entity, which would require at a very minimum that they meet annually. As I said, there are a



couple of provisions and we're just trying to remind ourselves specifically where they are.

I believe it's section 42. For example, they have to meet after a triennial evaluation. I believe there's a provision where the administration corporation considers that there's a change that needs to be addressed by the sponsors corporation or a matter that needs to be drawn to their attention. There are a number of specific circumstances listed there, and given that the sponsors corporation has natural person powers, they then choose whenever else they need to meet.

**Mr. Hardeman:** If one of the employee groups decided they were going to request the sponsors corporation to create a supplementary plan, as is allowed under the act, how would they proceed to get the sponsors corporation to meet to consider a supplementary plan that is not presently mandated in the legislation?

**Ms. Hope:** I'm just conferring here. They would just need to ask, and it's up to the sponsors corporation itself to decide how it wishes to carry out business and how meetings will be called and under what circumstances matters will be brought forward for consideration: what kind of notice, that sort of thing.

**Mr. Hardeman:** So presently in the legislation there is nothing that deals with how that would happen?

**Ms. Hope:** Correct.

**Mr. Hardeman:** If CUPE decides, as was told to them at the committee hearings, that they would ask, along with their employer, to create a supplementary plan, there's nothing in the bill that directs them as to how they should proceed with that to the sponsors corporation and when they could expect the sponsors corporation to consider the possibility.

**Ms. Hope:** There are provisions in the bill for the two advisory committees on benefits, so presumably those kinds of issues might be discussed among advisory committee members and brought forward to the sponsors corporation for consideration.

1230

**The Chair:** Any further debate? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 25 carry? All those in favour? All those opposed? That's carried.

Section 26; Ms. Horwath.

**Ms. Horwath:** I move that subsection 26(3) of the bill be struck out and the following substituted:

"Decision about a specified change

"(3) A decision respecting a specified change is effective only if it is made under one of the following paragraphs:

"1. At a meeting called for the purpose of considering the matter, the sponsors corporation either decides to make the specified change and passes a bylaw respecting it, or the sponsors corporation decides not to make the specified change.

"2. At a meeting called for the purpose of considering the matter, the sponsors corporation decides to have the matter determined under a supplementary decision-

making mechanism described in subsection (4) or (5) and the result of the decision-making mechanism is either to make or not to make the specified change."

Madam Chair, this basically does away with the two thirds majority requirement, so that the ability for changes to be made is not put through the added hurdle of the two thirds majority, but rather through the regular process that parties are accustomed to in their regular dealings with each other.

It's our belief that matters of these kinds of changes be left to the negotiations of the parties. They're accustomed to that kind of relationship, and they're accustomed to the kinds of decision-making processes that would be undertaken should an impasse occur. In the opinion of the New Democratic Party members of the Legislature, putting it through the two thirds majority requirement is an unnecessary hurdle and an untenable position to put plan members in, if they're attempting to have improvements made to their pensions.

**The Chair:** Any comments or questions?

**Mr. Duguid:** We won't be supporting this amendment. We do believe the two thirds majority requirement will provide for a little better consensus-building and ensure that, in fact, the integrity of the fund is paramount and considered throughout.

Secondly, I believe that the second part of this motion takes out the requirement for a vote to go to mediation or arbitration; that would happen by default. That's my reading of it, anyway. We have some concerns about that. We think it is healthy for the board, even if they don't have a two thirds majority and the vote falls between 50% and two thirds, that it go back to the board for a vote. Nine times out of 10, they may vote for the arbitration, if that's the direction they're going in, but at least it gives them an opportunity to consider whether they want to go through a dispute settlement process or either reconsider their positions or send it out for further information. So it gives them some other options.

**Mr. Hardeman:** I don't support this resolution, as it takes out the ability to use the voting manner set out. Having said that, I strongly disagree with the voting and the process the bill presently has too. I guess I'll just vote against both of them, because I do think it's a big problem when you have a board make a decision and because they don't have enough votes it goes to arbitration, and if it has enough votes it doesn't go to arbitration. That really does give power in the hands of a few, as opposed to the voice of the board. I don't agree with it in the bill, but I also don't agree with eliminating the extra standard of care before you make changes to the plan.

**The Chair:** Any further debate? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Next is a government motion; Mr. Lalonde.

**Mr. Lalonde:** I move that paragraph 4 of subsection 26(6) of the bill be struck out and the following substituted:

"4. The arbitrator shall not make a decision to increase benefits under an OMERS pension plan if the decision,



combined with all other decisions made by an arbitrator in the previous 36 months to increase benefits under the plan, would result in a total increase to the contribution rate for the plan for members or participating employers of more than 0.5%.”

**The Chair:** Mr. Duguid.

**Mr. Duguid:** We’ve dealt with the intent of this earlier on with regard to the 36-month period before benefits can be added on. This is just specific language that provides greater clarity to that original intent.

**The Chair:** Any further debate? Mr. Hardeman.

**Mr. Hardeman:** I’m just wondering if we could get the parliamentary assistant to verify for me the 0.5%. Is that 0.5% increase on the total benefit package that the employees get or is that 0.5% in the increased contributions to the OMERS pension plan?

**Mr. Duguid:** I believe that’s on the arbitrator’s award, but actually, I’ll refer this to staff just to ensure.

**Mr. Tom Melville:** My name is Tom Melville. I am legal counsel with the Ministry of Municipal Affairs and Housing. The 0.5% arbitrator cap that you’re referring to refers to an increase in the contribution rate resulting from whatever the award might be.

**Mr. Hardeman:** So it really means it’s 0.5% of the contributions that either of the two parties make to the OMERS plan.

**Mr. Melville:** The plan text sets out certain contribution rates which are equal for employer and employee. Hypothetically, if the contribution rate was, say, 7%, then the increase to that rate could be 0.5%; it could be increased to 7.5% after the award. But the rate would actually be calculated in reference to the cost of that increase in benefit.

**Mr. Hardeman:** So if the benefit package is increased to give a totally different benefit—they started in the negotiations, they got a benefit increase aside from those listed in OMERS and it went to arbitration—would the total package of benefit increases still have to stay within the 0.5%?

**Mr. Melville:** Excuse me, are you referring to pension increases?

**Mr. Hardeman:** Let’s just assume that they got free parking, which is a cost, but it’s a taxable benefit so it’s a benefit on their pay. Would that be part of the 0.5%?

**Mr. Melville:** No, it would not. The 0.5% refers to a decision of the sponsors committee in terms of making changes to a pension plan, so it has nothing to do with arbitration or decision-making at the local level for other changes.

**Mr. Hardeman:** If this just applies to the OMERS contributions, then why is it necessary, since previously in the bill we already included the fact that they can only award one benefit at a time? If that benefit is over 0.5% contribution, how would it ever be awarded? If it’s not, then since they can only do one at a time, they could never go over 0.5%.

**Mr. Melville:** Part of this is a policy question which I think should be answered by a policy person or by the member. But in terms of section 10.1—the decision

requirement that the decisions be made every three years—that applies to a required supplementary plan provision which is separate from section 26, and in fact the arbitration provision here doesn’t apply there.

**The Chair:** Further questions? Ms. Horwath.

1240

**Ms. Horwath:** Well, I’m just wondering—the way this is stated, it says, “combined with all other decisions made by an arbitrator in the previous 36 months.” So I’m just trying to figure out, if negotiations go to an impasse and an interest arbitration takes place, but then the arbitration process drags on and on and on, that arbitration may not be settled. The next set of negotiations might be nigh, and then 36 months might not elapse between one set of negotiations and the next. Is that possible, that in fact this prevents the next contract from making improvements because the process has taken so long for the previous contract that in fact—do you see what I’m getting at? So by changing it from any three-year period to 36 months, or even by having this language, does that prevent the next set of negotiations from moving forward if it happens to be within the 36-month time frame?

**Ms. Hope:** I wonder if it would help in clarifying if I just drew the distinction between—there are two places in this context of the whole discussion of the bill where we can be discussing arbitration. One, as in this case, is at the decisions of the sponsors corporation.

**Ms. Horwath:** Right, as opposed to the local negotiations. Okay, I get it.

**Ms. Hope:** So this section specifically deals with arbitration for the sponsors corporation.

**Ms. Horwath:** Okay.

**Mr. Hardeman:** Going back to the 0.5%, it doesn’t say here what type of OMERS plan. Does this mean that “the arbitrator shall not make a decision to increase benefits under an OMERS pension plan” if that decision would be more than 0.5% in the past 36 months? So there can be no increase that would have a greater impact than 0.5%, regardless of whether it’s a supplementary plan or the main plan?

**Mr. Melville:** There could be theoretically, under this bill in the future, separate pension plans. The 0.5% would apply to each plan independently. The new supplemental plan, for example, to be established under section 10.1 will be a separate pension plan from the existing OMERS plan. So the 0.5% limit applies to each plan independently.

**Mr. Hardeman:** But wouldn’t a supplementary plan be an OMERS plan?

**Mr. Melville:** Yes.

**Mr. Hardeman:** So we have the basic OMERS plan, we have a supplementary plan for someone, and no arbitrator can award more than an increase in either one of those that would amount to more than 0.5%. Is that right?

**Mr. Melville:** To the extent I understand the question, my understanding would be that the 0.5% applies to each plan independently. So in the main plan, the limit of the arbitrated increase would be 0.5%. Independently of that,



if there were a decision in respect of the supplemental plan, let's say, there would be a maximum increase in the contribution rate for that plan, which is a separate contribution rate of 0.5%.

**Mr. Hardeman:** So you're suggesting in this amendment that there's something that divides the supplementary from an OMERS plan? To me, it's very clear that "the arbitrator shall not make a decision to increase benefits under an OMERS pension plan if the decision, combined with all other decisions made by an arbitrator in the previous 36 months to increase benefits under the plan, would result in a total increase of the contribution rate for the plan for the members or participating employers of more than 0.5%." So in fact, when the supplementary plan is available, if implementing any part of that makes the total contribution increase more than 0.5%, they can't do it. Is that right?

**Mr. Melville:** If it were an arbitrated decision and if it were not a decision under section 10.1, because section 10.1 operates independently of this, section 10.1 being the required new supplemental plan.

**The Chair:** Any further questions or comments? Seeing none, those in favour of the motion? Those opposed? That's carried.

Mr. Hardeman, I believe you have the next motion.

**Mr. Hardeman:** I withdraw it.

**The Chair:** It's been withdrawn. Shall section 26, as amended, carry? All those in favour? All those opposed? That's carried.

Ms. Horwath, you have the next motion.

**Ms. Horwath:** I move that section 27 of the bill be struck out and the following substituted:

"Recovery of costs

"27(1) The sponsors corporation may require the administration corporation to reimburse it from the pension fund for the primary plan for any of its costs incurred in relation to its activities under this act.

"Same

"(2) The administration corporation shall comply with a request of the sponsors corporation made under subsection (1).

"Dispute referred to arbitrator

"(3) In the event of a dispute concerning the nature of any of the costs incurred by the sponsors corporation that it seeks to have reimbursed under subsection (1), such dispute shall be referred to an arbitrator."

This is to acknowledge or to recognize the costs that might be incurred by a sponsors corporation of doing its due diligence, should it be given that extra purview that we've been recommending in regard to overseeing the work of the administration corporation. In so doing, expenses will be incurred, and what this motion is meant to do is simply to require that the administration corporation covers off those expenses at the request of the sponsors corporation, and that if there is a dispute as to whether or not they're legitimate expenses, that dispute be referred to an arbitration process.

**The Chair:** Any other debate?

**Mr. Duguid:** We won't be supporting this. We feel that the administration corporation, given their fiduciary duty, is in the best position to determine whether or not recouping expenses from the main OMERS plan is lawful or not lawful. We can't support this.

**The Chair:** Any further debate? All those in favour of the motion? All those opposed? That's lost.

A government motion; Ms. Matthews.

**Ms. Matthews:** I move that section 27 of the bill be struck out and the following substituted:

"Recovery of certain fees and expenses

"27 The sponsors corporation may require the administration corporation to reimburse it from any pension or other fund for any of its costs that in the opinion of the administration corporation may lawfully be paid out of the fund."

**The Chair:** Any discussion about that?

**Ms. Horwath:** Can I just ask what the amendment in effect does? Does it mean that if there are costs related to a supplemental plan being implemented, that gets taken from that supplemental plan's contributions, keeping them separate for each?

**Ms. Hope:** Yes.

**Mr. Hardeman:** In that same vein, I'm a little concerned about the last part: "the administration corporation may lawfully be paid out of the fund." Isn't that rather a strange way of wording it, that one asks the other one to pay a bill, and then the payer gets to decide whether it's lawful or not? I don't know how they would get past the hurdle if they said, "We don't want to pay it, so we'll just say it's not lawful." I don't see the merit in writing it that way.

**Ms. Hope:** I believe the reference is with regard to federal pension law and rulings of the Canada Revenue Agency, which sets out fairly stringent requirements over what kinds of costs may or may not be paid out of pension funds. It's providing a nod, if you will, to that legal framework that must be followed, and the administration corporation, as fiduciary, is in the role of making that judgment.

**Mr. Hardeman:** So this is just according to pension law.

**Ms. Hope:** The federal Income Tax Act.

**Mr. Hardeman:** As I read this, I read it as any that may "lawfully be paid out."

**Ms. Hope:** There may also be common law around that, and the Pension Benefits Act as well, so there's a variety of—

**Mr. Hardeman:** See, my problem arises from the previous line, where it says, "reimburse it from any pension or other fund." We have a situation where they need money, they send in a bill, and the sponsors corporation says, "No, we're not paying that; it's not lawful." Why not?

**Ms. Hope:** I think the focus is on which costs can lawfully be paid out of which fund, and the reason for the amendment is to include reference to the fact that there are other funds. For example, there are funds for the retirement compensation arrangements. When there's a



supplemental plan, there'll be funds for that. My understanding is that if there were costs of the sponsors corporation associated with the supplemental plan, for example, it would not be lawful to pay for those out of the primary plan fund. They would need to be paid out of the supplemental plan fund. It's allowing for that appropriate payment out of the appropriate fund, given the broad context of pension law.

1250

**Mr. Hardeman:** So your interpretation is that the term "or other fund" means other pension funds, something to do with pension, not just—

**Ms. Hope:** Other funds that the administration corporation would be responsible for or would be administering.

**Mr. Melville:** There could be other pension funds in the sense that the supplemental plan, for example, might have its own fund, or a retirement compensation arrangement, which is technically not quite a pension fund, might have its own fund. So it allows for a payment out of the appropriate fund that could lawfully be paid.

**Mr. Hardeman:** In your opinion, then, there's no opportunity for "or other fund" to mean funds that have absolutely nothing to do with pensions at all? The administration corporation may very well have a reserve to buy new computers. This says "other fund." It doesn't say "other pension fund"; it says "from any pension or other fund." When the sponsors corporation sends in an invoice to be paid, if it's not allowed to be paid out of pension funds, what would be unlawful about paying it out of other funds that were not pension funds? If it's not unlawful, they would be obligated to pay.

**Mr. Melville:** I assume that the administrator of the pension plan, which is the administration corporation, would follow the law in administering its pensions. It would set up funds in accordance with the law, which does dictate what purposes you can use pension monies for.

**The Chair:** Any further comments or questions?

**Ms. Horwath:** I'm a little bit uncomfortable, considering that some stakeholders were quite concerned about the issues of what was sometimes described as cross-subsidization of the plans. When I read this, I took it to mean exactly what we've just been discussing, that, for example, any costs incurred as a result of supplemental plans would be taken from supplemental plans. I'm just not sure of the extent to which this language is strong enough to guarantee that that happens. I just want to get a better comfort level that saying "that in the opinion of the administration corporation may lawfully be paid out of the fund" takes into consideration the entire issue of cross-subsidization, or that the requirement in the legislation be separate that those funds pay for their own costs to ensure that so the main pension fund is not in any way subsidizing the supplemental plans. I just need a comfort level about that. I'm not sure whether this language does it for me.

**Ms. Hope:** The intent of this language is to prevent the sponsors corporation from requiring the adminis-

tration corporation to pay funds out of a fund that it shouldn't be coming out of. There are provisions in federal law and there are provisions in the Pension Benefits Act which govern how pension costs may or may not be paid out of different funds. So that's what this is anchoring: the payment of funds by the administration corporation.

**Mr. Melville:** I think your question is relating to the concern that is called rebound costs, and that's addressed in the bill separately in section 14.

**Mr. Hardeman:** I want to put on the record that when I look at what's presently there—it says to strike it out and put this one in—the only difference I can see is "or other fund," and I'm really concerned about what that means. If there are other pension funds, it's covered under the first one—"pension fund." It doesn't matter whether it's a supplementary pension or an early retirement—whatever it is. If it's a pension fund, it's a pension fund. When we start calling it "other" funds and not defining it, that means any money. A fund is a fund. It may be the petty cash; it's still a fund. Why it's worded that way concerns me.

**Mr. Melville:** As a technical comment on this, a retirement compensation arrangement isn't a pension fund. So the reference to "other fund" would refer primarily to a fund of a retirement compensation arrangement.

**The Chair:** Further comments? Seeing none, shall the motion carry? All those in favour? All those opposed? That's carried.

Shall section 27, as amended, carry? All those in favour? All those opposed? That's carried.

Committee, this seems like a good time to take a break for our lunch. We've achieved a lot. So we'll be back at 2 o'clock for the beginning of section 28.

*The committee recessed from 1255 to 1408.*

**The Chair:** We're back from our recess. We're considering clause-by-clause consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act.

We are at the section 28 portion of the clauses. Ms. Horwath, you're on deck.

**Ms. Horwath:** I move that section 28 of the bill be amended by adding the following subsection:

"Same

"(4.1) The administration corporation shall comply with a request of the sponsors corporation made under subsection (4)."

Again, this is just another—I shouldn't say "just," because it's important, from our perspective, anyway. It's important in that it defines the accountability of the administration corporation to the sponsors corporation vis-à-vis requests for information. Just to recap some of the concerns that have been raised, without that extra oversight, without that sober second thought, without that ability of the sponsors corporation to review and force accountability of the decisions of the administration corporation, it is the concern of a number of members of the plan. I'll just reiterate that you've heard from members who are members of CUPE who are extremely



concerned about the accountability factors, about the ability of the sponsors corporation to have an oversight capacity; at the very least to be able to review information and decisions that are being made by the administration corporation on something as extremely important as the pension plan that they are going to be relying on for their retirement.

This amendment is in keeping with the ones that I've tabled previously, and I believe there are still a couple more.

**The Chair:** Any further discussion? All those in favour of the motion? All those opposed? That's lost.

Shall section 28 carry? All those in favour? All those opposed? That's carried.

There are no changes to 29, 30, 31. Shall 29, 30, 31 carry? All those in favour? All those opposed? Those are carried.

Section 32 has a motion, page 36, which is ruled out of order because a decision has already been made on this on the first reading of this bill. Our next item is from Mr. Hardeman. A question?

**Mr. Hardeman:** Yes, I just have a question on the process. Because it was amended after the first reading, all of a sudden you cannot amend that any more?

**The Chair:** I'll ask the clerk to answer the question.

**The Clerk of the Committee:** No. It's the exact same motion that was moved at first reading, so the committee has already made the decision on this exact same motion.

**Mr. Hardeman:** The previous motion had been to eliminate it.

**The Clerk of the Committee:** It was exactly the same wording.

**Mr. Hardeman:** Okay.

**The Chair:** Shall section 32 carry? All those in favour? All those opposed? That's carried.

Section 33, page 37; Ms. Horwath.

**Ms. Horwath:** I move that section 33 of the bill be amended by adding the following subsection:

"Same

"(1.1) The sponsors corporation shall ensure, in any bylaw adopted under subsection (1), that the entitlement of organizations that represent employees to choose members of the administration corporation shall be allocated among those organizations based on the number of employees who are members of the OMERS pension plans that each organization represents."

Again, not dissimilar from the motion that I brought forward in regard to the sponsors corporation, this similarly is the issue of rep by pop on the administration corporation.

**The Chair:** Discussion?

**Mr. Duguid:** We won't be supporting this motion. The administration corporation is there with a fiduciary duty. It's not really to be there as representative of other stakeholders as much as to be there to make sure the fund operates in the best possible way. I would be concerned about saying the representation has to be exactly to do with representation by population. Rather, I think, the idea should be to appoint the best possible people to this

administration committee with the best possible representation of the broad interests of all stakeholders in the OMERS fund.

**The Chair:** Any further discussion? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Mr. Rinaldi.

**Mr. Rinaldi:** I move that section 33 of the bill be amended by adding the following subsection:

"Same

"(1.1) Despite subsection 26(1), a decision of the sponsors corporation to pass a bylaw under subsection (1) requires an affirmative vote of two thirds of its members."

**The Chair:** Any discussion?

**Ms. Horwath:** Can I just have the government side explain the amendment?

**The Chair:** Mr. Duguid do you want to answer that or do you want staff to do that?

**Mr. Duguid:** I'm just going to get staff to explain this particular one.

**Ms. Hope:** The sponsors corporation has the capacity on an ongoing basis to determine the composition of the administration corporation. This motion would require that they could only pass such a bylaw to change the composition with a two thirds majority vote.

**The Chair:** Any further questions?

**Ms. Horwath:** So this is saying that in terms of the sponsors corporation making its own decisions around its own composition?

**Ms. Hope:** No, the composition of the administration corporation, the fiduciary body. It's suggesting there needs to be a significant proportion of the members of the sponsors corporation agreeing to changing the composition of the fiduciary body.

**Ms. Horwath:** Okay. Again, this is just more or less, if I could characterize it that way, a further entrenching of the principle of the two thirds supermajority vote. Whereas it was required for certain parts of the bill in the previous reading, in this reading it's now required for extra sections, which is the idea of the composition of the fiduciary body. It's adding another area where the two thirds majority vote is required; is that right?

**Ms. Hope:** Yes.

**Ms. Horwath:** All right. Again, I didn't support that principle. I don't believe that the two thirds supermajority is the right way to go in regard to the decision-making process of the sponsors corporation and I can't support this amendment.

**The Chair:** Any further discussion? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Page 37b; Mr. Dhillon.

**Mr. Dhillon:** I move that subsection 33(2) of the bill be struck out and the following substituted:

"Transition

"(2) Despite subsection (1), for the period commencing on the day that subsection 32(1) comes into force and ending immediately before the third anniver-



sary of that day, the composition of the administration corporation is as determined under section 44.”

**The Chair:** Any discussion, questions?

**Ms. Horwath:** If I can just ask what the effect is of the change, what it does?

**Mr. Duguid:** This is the first of two motions which are proposed to allow the members of the initial administration corporation to be replaced through a staggered process, which is something that had been talked about and recommended to ensure there's some kind of, I guess you would call it, corporate knowledge that's maintained throughout and ensures stability of decision-making throughout the transition period.

**The Chair:** Any further questions, comments? All those in favour of the motion? All those opposed? That's carried.

Shall section 33, as amended, carry? All those in favour? All those opposed? That's carried.

Shall sections 34 and 35 carry? All those in favour? All those opposed? They are both carried.

Section 36; Ms. Horwath. This is motion 38.

**Ms. Horwath:** I move that the bill be amended by adding the following section before the heading “Transitional Matters”:

“Investment and funding policies, etc.

“36(1) Within 90 days after the day subsection 32(1) comes into force, the administration corporation shall,

“(a) develop proposed investment policies for the assets of the OMERS pension plans;

“(b) develop a proposed investment plan for the following 12 months;

“(c) develop a proposed funding policy for the OMERS pension plans; and

“(d) submit a statement of its proposed investment policies and its proposed investment plan and a statement of its proposed funding policy to the sponsors corporation for approval.

“Approval

“(2) The sponsors corporation may approve the proposed investment policies, the proposed investment plan and the proposed funding policy or may refer any or all of them back to the administration corporation for further consideration and resubmission for approval by the sponsors corporation.

“Annual investment plan

“(3) The administration corporation shall annually develop a proposed investment plan for the following 12 months.

“Approval

“(4) The administration corporation shall annually submit its proposed investment plan to the sponsors corporation for approval and the sponsors corporation may approve the proposed investment plan or may refer it back to the administration corporation for further consideration and resubmission for approval by the sponsors corporation.

“Investments to comply with approved investment policies, etc.

“(5) The administration corporation shall not make any investment with the assets of the pension plans or its own assets if the investment is not in accordance with the investment policies and investment plan most recently approved by the sponsors corporation.”

1420

Just by way of an explanation, this outlines not only the duties of the administration corporation insofar as putting together the plans, but it enshrines in the legislation a requirement that has those plans receive approval from the sponsors corporation. I think that I've been pretty clear in trying to reflect the concerns that are being raised by members of the plan who are concerned about some of the past practices that have taken place that are currently under scrutiny from a number of different bodies, and the idea, which is quite reasonable, that the actions of the administration corporation receive a second set of eyes, receive a second review, receive a bit of scrutiny from another body, particularly the sponsors corporation. So it's back to the principle of having an accountability structure in place whereby the sponsors corporation can keep tabs on, or at least keep a view over, what's happening at the administration corporation level in the interest of the members.

**Mr. Duguid:** Again, we feel this muddies the relationship between the administration corporation and the sponsors corporation, so we won't be supporting it.

**The Chair:** Any further comments? All those in favour of the motion? All those opposed? That's lost.

Section 37; Ms. Horwath.

**Ms. Horwath:** I move that the bill be amended by adding the following section before the heading “Transitional Matters”:

“Response to requests from the sponsors corporation

“37 Without limiting the generality of section 16,

“(a) the administration corporation shall provide the sponsors corporation with anything requested by the sponsors corporation, including reports, opinions, agreements, information or documents required under clause 25(2)(d), within 30 days after receiving the request.

“(b) the administration corporation shall provide the sponsors corporation with any report or opinion described in this act within 30 days after receiving the report or opinion;

“(c) the administration corporation shall provide the sponsors corporation with any report described in this act within 30 days after finalizing the report;

“(d) the administration corporation shall provide the sponsors corporation with copies of any bylaws or resolutions passed under subsection 35(3) requested by the sponsors corporation under clause 25(2)(j) within 30 days after receiving the request.”

Again, this refers to some of the previous motions around disclosure of information and passing on of information. Notwithstanding how the other clauses ended up, what this clause is intending to do is to say that not only is it a requirement that the information flow, not only is there an obligation to have the information flow, but that in fact the information flow in a timely manner.



That's what this amendment was intended to do, to make sure that information was coming in a time frame that would make it at least usable by the sponsors corporation.

**Mr. Hardeman:** Just a general question to the mover of the motion: I know that we've received a number of these where we had the cross-reference from the administrative corporation to the sponsoring corporation. I'm just wondering if there is an explanation, and where I would find it, of the likelihood of the sponsoring corporation being more accountable to the members than the administrative corporation. To me, if we don't have faith in the administrative corporation to do what's in the best interest of its members, what is there that would improve the situation by having it going through one more corporation? Is this just to create paperwork, or can I be confident that this is going to help to make the thing more accountable to the members of the OMERS plan?

**Ms. Horwath:** I think there are a couple of different things. We heard from deputants at the hearings in both sessions, last time and the time before, that there was a real concern around some of the investment policies and the result of those on the plan. That was with the current model. What these particular stakeholders brought to our attention is that there's a different way of doing things, there's a different model. It comes back to that issue as to whether or not it's appropriate to have that extra oversight of the decisions being made by the administration corporation. Particularly, as we go through the rest of these amendments, you'll see that there has been a strengthening or, let's say, a change in the representatives on the sponsors committee. I think the government's bringing some amendments forward that will change the representation on the sponsors committee to make it more reflective of the plan members in terms of representation, which is a movement in the right direction, but the problem is that those changes are not equally reflected in the admin corporation. Because there is no direct relationship, there is no oversight, there is no sober-second-thought process provided to the sponsors corporation, which in fact winds up being much more representative of the stakeholders involved in the OMERS pension plan.

Although this is specifically around timelines, the broader issue is around accountability. Again, there's a philosophical difference between what the government has decided to do in terms of the model and what we've heard, for example, from CUPE and others, and even the OSSTF, about having a trustee model that's not the same as the corporate model, which is what the government decided to go with.

**The Chair:** Any further discussions? Seeing none, shall the motion carry? All those in favour? All those opposed? That's lost.

Section 38; Mr. Lalonde.

**Mr. Lalonde:** I move that subsection 38(1) of the bill be amended by striking out "22 persons" and substituting "14 persons."

**Mr. Duguid:** Just by way of explanation, most, if not all, of the stakeholders that saw the original configuration

of the sponsors corporation felt that it was so large that it might become unwieldy. We received complaints from all sides that it was going to be difficult for them to get proper decisions being made. As well, some of them even had concerns about appointing reps and paying reps and things like that. So we thought, we'll do the best to try to maintain as much representation as we could, shrink it down and, to accommodate those who have larger populations, provide a little bit of a weighted voting system. You'll see in subsequent motions that we'll get into that. This one just deals with the size itself, which it brings it down from 22 people to 14.

**The Chair:** Further discussion?

**Mr. Hardeman:** In the past number of resolutions introduced by the New Democrats, there has been talk that we needed representation of all the different groups on the boards. My understanding was that that was not very practical, because that could lead to a very large board.

Am I to take from this amendment that we are going to be able to accommodate adequate representation of all the groups that have presented to us? The parliamentary assistant suggested that we had a lot of presentations where they thought the board would be unwieldy at 22, but are those same people who suggested it was going to be unwieldy going to be satisfied with this type of representation on the board?

**Mr. Duguid:** I would expect most of the groups would be more satisfied with the smaller group. Nobody has really lost their position on the board. There's been a rejigging of numbers to accommodate a variety of concerns, but overall, I think most of the groups that were on the original board supported shrinking it down.

I don't expect for a minute that every group is going to be fully satisfied. I think that all the groups wanted as much representation as they could possibly get. Some with a sizable amount of representation may want more, but that will be up to them to articulate.

**Mr. Hardeman:** Not wanting to speak to amendments that are yet coming, could the parliamentary assistant maybe highlight for me, with eight fewer members on the board, who will not be having those representatives? Which groups would not be represented because of that, or who would have fewer representatives?

**Mr. Duguid:** I'd be happy to walk you through it. It is getting into the next motions, but I don't have a problem—

**Mr. Hardeman:** I can wait for that.

**Mr. Duguid:** Do you want to wait until we get into the other motions? Then we'll discuss that later.

**The Chair:** Okay. Any further discussion of the motion?

**Mr. Hardeman:** I'll stand the question down until the next motion.

1430

**The Chair:** You're being so congenial today; it's going so well.

Any other discussion? Shall the motion carry? All those opposed? That's carried.



Shall section 38, as amended, carry? All those in favour? All those opposed? That's carried.

Section 39, motion 39b; Ms. Matthews.

**Ms. Matthews:** I move that paragraph 1 of subsection 39(1) of the bill be amended by striking out "five" and substituting "two".

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Do the members opposite have anything that shows the composition of the committees as restructured? No? I will ask that this be photocopied and given to them, because it will make it easier for them to follow this. In the meantime, I'll just quickly go over what the changes are.

**The Chair:** Mr. Duguid, it will be hard for us to get a copy if you're holding the only copy that we can put our hands on.

**Mr. Duguid:** It's not the only copy. There are many.

**The Chair:** Thank you. I'm just trying to be helpful.

**Mr. Duguid:** That will give them a little bit of help in terms of seeing what's happening here.

**The Chair:** Can you just whet their appetite until they see it?

**Mr. Duguid:** This motion specifically refers to AMO's representation on the sponsors committee, where their numbers go from five to two. Each of those two members will get a weighted vote of two each. So their representation overall would be two members with four votes. They take into consideration 58% of active members; they'd have approximately 44% voting ability on it. That's for this first motion. Would it be helpful if I walked through the rest of them so that we don't have to do it as we're going through?

**The Chair:** I don't know; they're grimacing at the thought of that. It's hard to do that.

**Ms. Horwath:** It's easy for you to see it visually with the chart, but for us—

**The Chair:** Maybe it would help if we just took a five-minute recess until we can get that document. I think it's fairly important. We'll take a short, five-minute recess.

*The committee recessed from 1432 to 1439.*

**The Chair:** We're going to return. We have the documents we need in front of us now. Mr. Duguid, I'm going to return to you. We're on 39b, and you were providing us with some additional information about the composition.

**Mr. Duguid:** The composition, as we provided on this particular motion: AMO was moving from five representatives to two, with two votes per member. Toronto was moving from two—this is not this particular motion but subsequent motions to deal with this—from two voting members to one voting member. Police services boards stay the same, school boards stay the same and "other" stays the same on the employer side.

On the employee side, CUPE went from five representatives to one, with three votes, and CUPE Local 79, on a rotation between Local 79 and Local 416, go to one voting member.

The Police Association of Ontario remains the same. Fire remains the same. The Association of Municipal

Clerks and Treasurers of Ontario is removed from the sponsors corporation, from the original. Retirees have one voting member, as they had before. We've added the Ontario Secondary School Teachers' Federation, with one voting member, and "other" goes from two voting members to one voting member.

That's the change to the sponsors committee overall. We're only looking at the one motion here in front of us, but that covers the other motions as well.

**The Chair:** Any further discussion? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Page 39c; Mr. Dhillon.

**Mr. Dhillon:** I move that paragraph 4 of subsection 39(1) of the bill be amended by striking out "Two persons" and substituting "One person".

**Mr. Duguid:** Just by way of explanation, this is the city of Toronto representation.

**The Chair:** Okay. Any further discussion? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Page 39d; Mr. Dhillon, do you want to do that one?

**Mr. Dhillon:** I move that paragraph 6 of subsection 39(1) of the bill be struck out and the following substituted:

"6. One person to be chosen by the Canadian Union of Public Employees (Ontario).

"6.1. One person who is representative of the Canadian Union of Public Employees (Ontario), Locals 79 and 416, to be chosen in accordance with subsection (3.1)."

**The Chair:** Any further discussion? Seeing none, all those in favour of the motion? All those opposed? That's passed.

Page 39e; Mr. Dhillon.

**Mr. Dhillon:** I move that paragraph 9 of subsection 39(1) of the bill be struck out and the following substituted:

"9. One person to be chosen by the Ontario Secondary School Teachers' Federation."

**The Chair:** Any discussion?

**Mr. Hardeman:** Maybe it's on the information that was put here, but what percentage of the OMERS plan are secondary teachers?

**Mr. Duguid:** They represent 4.38%, and they will have 11% in terms of voting representation on the sponsors committee. They're one of the larger "other" groups, if you want to call them the "other" groups.

**The Chair:** Any other discussion? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Page 39f; Mr. Lalonde.

**Mr. Lalonde:** I move that paragraph 10 of subsection 39(1) of the bill be struck out and the following substituted:

"10. One person who is representative of other members of the OMERS pension plan, to be chosen in accordance with subsection (4)."

**The Chair:** Any discussion? Seeing none, all those in favour? All those opposed? That carries.



Page 39g; Ms. Matthews.

**Ms. Matthews:** I move that section 39 of the bill be amended by adding the following subsection:

“Representative of CUPE (Ontario), Locals 79 and 416

“(3.1) The person referred to in paragraph 6.1 of subsection (1) is to be chosen by the Canadian Union of Public Employees (Ontario), Local 79, and his or her replacement is to be chosen by the Canadian Union of Public Employees (Ontario), Local 416; thereafter, the replacement is to be chosen on an alternating basis by Locals 79 and 416.”

**The Chair:** Any discussion? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

Page 39h; Mr. Rinaldi.

**Mr. Rinaldi:** I move that subsection 39(4) of the bill be amended by striking out “The two persons referred to in paragraph 10 of subsection (1) are to be chosen as follows” at the beginning and substituting “The person referred to in paragraph 10 of subsection (1) is to be chosen as follows.”

**The Chair:** Any discussion? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

Page 39i; Mr. Dhillon.

**Mr. Dhillon:** I move that paragraphs 3 and 4 of subsection 39(4) of the bill be struck out and the following substituted:

“3. The sponsors corporation shall invite the largest organization to choose the person within the period specified by the sponsors corporation.

“4. If the organization fails to choose a person within the specified period, the sponsors corporation shall invite the next-largest organization to choose the person within the period specified by the sponsors corporation. This step is repeated until the person has been chosen.”

**The Chair:** Any discussion? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

Government motion 39j; Mr. Lalonde.

**Mr. Lalonde:** I move that section 39 of the bill be amended by adding the following subsection:

“Weighted voting

“(9) The members of the sponsors corporation shall have voting rights as follows:

“1. The members referred to in paragraph 1 of subsection (1) shall have two votes each.

“2. The member referred to in paragraph 6 of subsection (1) shall have three votes.

“3. Every other member shall have one vote each.”

**The Chair:** Any further discussion? All those in favour of the motion? All those opposed? That’s carried.

Shall section 39, as amended, carry? All those in favour?

**Ms. Horwath:** We don’t comment on the section as a whole before it goes to the vote?

**The Chair:** Of course, yes.

**Ms. Horwath:** I just wanted to take this last opportunity on section 39, in regard to the composition of the sponsors corporation, to say that I appreciate that there has been some movement on the sponsors corporation by the government in trying to respond to the concerns

raised by the stakeholders in regard to the composition. I think that’s a positive move. Also, notably, the removal of the municipal managers from the employee side of representatives of the sponsors corporation is, I think, a positive move. Unfortunately, it still remains that the sponsors corporation’s purview is restricted to that of changes to the plan but not providing the opportunity for oversight and comment on the activities of the administration corporation, nor any of the information having a second look as it’s being processed by the administration committee on which the investment decisions are being made.

So although the government has moved in a positive direction in regard to the structure, unfortunately there remains a body that doesn’t have the kind of effect that many plan members would like to have seen in terms of the structure. As we go on to see the changes in the admin corporation, we’re going to be disappointed to not have a similar reflection of acknowledgement, particularly around the municipal managers and treasurers group being kept on the employee side of the table. It begs the question, why does it make sense to remove them from the employee side of the table in the sponsors corporation, as we’ve just done, but not in the admin corporation? What’s the difference? If they shouldn’t be on that side for one, then neither should they be for the other.

I thought it was important to raise that before passing the section as a whole.

1450

**The Chair:** Any other debate or discussion on this section? Seeing none, shall section 39, as amended, carry? All those in favour? All those opposed? That’s carried.

Section 40, government motion 39k; Mr. Lalonde.

**Mr. Lalonde:** I move that subsection 40(3) of the bill be struck out.

**The Chair:** Any discussion? Any detail, Mr. Duguid?

**Mr. Duguid:** My understanding is that by striking it out, this will just allow the advisory committee on benefits, police and fire sector, to carry on after the sponsors committee passes the first bylaw. If staff have anything else to add on this, that would be great. As we’re getting to these last motions, I wasn’t able to really discuss them with staff too much.

**The Chair:** Would staff be able to clarify that he’s done a good job as he winged it?

**Ms. Hope:** That was accurate.

**Mr. Duguid:** I winged it pretty well, then.

**The Chair:** Okay. Any other questions? All those in favour of the motion? All those opposed? That’s carried.

Shall section 40, as amended, carry? All those in favour? All those opposed? That’s carried.

Section 41, government motion 39l; Mr. Lalonde.

**Mr. Lalonde:** I move that subsection 41(3) of the bill be struck out.

**The Chair:** Mr. Duguid?

**Mr. Duguid:** Just a quick explanation: Again, this allows the advisory committees on benefits and other



members to carry on after the sponsors committee begins rolling.

**The Chair:** Any other questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 41, as amended, carry? All those in favour? All those opposed? That's carried.

Shall section 41.1 carry? All those in favour? All those opposed?

Shall section 42 carry? All those in favour? All those opposed? That carries.

Ms. Horwath, motion 40 is yours.

**Ms. Horwath:** I move that subsection 43(3) of the bill be amended by striking out "The sponsors corporation may use mediation" at the beginning and substituting "The sponsors corporation shall use mediation".

If I'm not mistaken, that is simply strengthening the language to ensure that that's the process that's used on impasse.

**The Chair:** Any discussion? Mr. Duguid.

**Mr. Duguid:** The concern I have about that is that I think it forces the sponsors corporation into mediation. They may choose to go another route; they may choose to reconsider, they may choose a number of different things, so I would not be supporting that.

**The Chair:** Any other discussion? Seeing none, all those in favour of the motion? All those opposed? That's lost.

The next motion is yours, Ms. Horwath.

**Ms. Horwath:** I move that paragraph 3 of subsection 43(3) of the bill be struck out and the following substituted:

"3. The sponsors corporation does not, within 30 days after the meeting at which the proposal is first considered, make a decision to accept the proposal, with or without amendments, or to reject it."

**The Chair:** Any discussion? Mr. Duguid.

**Mr. Duguid:** I won't be supporting this because it removes the requirement for a majority of members to support a specified change.

**The Chair:** Mr. Duguid, it's a little bit hard to hear you. I heard you that time, but just barely.

**Mr. Duguid:** I'm sorry. I'm saving my voice. I've got a long motion coming up.

**The Chair:** You might want to save it and give them to other people, or move your mike closer; one of the two.

All those in favour of motion 41? All those opposed? That's lost.

Ms. Horwath, you have the next one.

**Ms. Horwath:** I move that subsection 43(4) of the bill be struck out.

**The Chair:** Any discussion? Ms. Horwath, did you want to—

**Ms. Horwath:** This motion and the ones previous are addressing not only the issue of the two thirds majority but what happens if decisions aren't made. If you don't support the precept of the two thirds majority requirement, which we don't, then these other motions would

take care of matters if there weren't the two thirds majority requirement. Unfortunately, the government has decided, I believe wrong-headedly, to stick with its amendments around requiring the two thirds majority decision-making on the sponsors corporation. These motions are a way to try to get them to change their mind. It's not working, though.

**The Chair:** It's an admirable attempt. Any further discussion?

**Mr. Hardeman:** Maybe I don't understand mediation, but whether it's "may" or "shall," isn't mediation a process to help two parties discuss a solution, and if they can't mediate, it ends up at loggerheads anyway? I can't see where it makes that much difference whether you have mediation or not.

**Mr. Duguid:** I think I can help out with that. There's a difference between "may" and "shall." "May" is that the parties can agree to go through a mediation process. "Shall" is that it will automatically go to mediation or, eventually, arbitration.

**Mr. Hardeman:** I just want to take it one step further and say, what's the end result of mediation? They still have to get both parties to agree. It's just getting someone to help with the discussion. I don't know why we would object to "shall have mediation." We will make every effort to come to an agreement. If that word was "arbitration," to me it's a little different, but "mediation" seems like a pretty benign way of trying to come to an agreement.

**Mr. Duguid:** From our perspective, it precludes the possibility for both parties to avoid the dispute resolution system altogether and come up with another solution, which is quite possible. It's probably not always going to happen, but sometimes parties faced with a dispute resolution system may say, "Well, let's work this out. We can work out a compromise or something among ourselves. We don't need to automatically go through this dispute resolution process." We want to leave that open to the parties so they have the option to determine, do they want to go through mediation or do they not?

**The Chair:** Any further discussion? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Ms. Horwath, yours is the next one.

**Ms. Horwath:** I move that subsection 43(11) of the bill be struck out and the following substituted:

"Decision by sponsors corporation

(11) The sponsors corporation may decide by an affirmative vote of a majority of its members to accept the proposal, with or without amendments, or may decide by an affirmative vote of a majority of its members to reject the proposal."

Again, this is reaffirming the idea of a simple majority, as is the case with most decision-making bodies that we come into day-to-day contact with. Super-majorities are very rarely required. Unfortunately, the government has decided that the sponsors corporation needs to go through a supermajority process to make decisions in certain areas. We fundamentally agree with many, in fact I believe all, of the employee groups who



have made presentations at this committee that the supermajority is onerous, is inappropriate and in fact serves to block the ability of certain groups of workers from obtaining the same kinds of consideration, particularly for supplemental plans, as others. Therefore, this motion is trying to bring back the decisions to the sponsors corporation as being a straight-out simple majority as opposed to a two thirds supermajority.

**The Chair:** Any further conversation? Seeing none, all those in favour of the motion? All those opposed? That's lost.

The last motion of this section is yours, Ms. Horwath.

**Ms. Horwath:** I move that subsection 43(12) of the bill be struck out and the following substituted:

"Arbitration request

"(12) If the sponsors corporation neither accepts, with or without amendments, nor rejects the mediator's report at its first meeting after receiving the mediator's report, the member who made the proposal may request arbitration of the matter.

"Same

"(12.1) If the member who made the proposal requests arbitration of the matter under subsection (12), the sponsor's corporation shall refer the matter to arbitration within 30 days after receiving the request."

Again, this is a dispute resolution mechanism that we believed, had all the other amendments we moved been passed, would be an appropriate way to get over disputes. Also, it acknowledges that when a dispute occurs, it's incumbent upon the member to bring it forward, and it then requires, through the "shall" language, the arbitrator to be engaged within 30 days.

**1500**

**The Chair:** Any further discussion? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 43 carry? All those in favour? All those opposed? That's carried.

Section 44, motion 44a; who drew the short straw and has to read this long motion?

**Mr. Duguid:** I'll do this one, since you were complaining about me not speaking loudly enough.

I move that section 44 of the bill be struck out and the following substituted:

"Transitional composition of the administration corporation

"44(1) On the day on which subsection 32(1) comes into force, the terms of office of the persons who hold office as members of the Ontario Municipal Employees Retirement Board immediately before that day are terminated and the administration corporation is composed of the following members:

"1. Two persons to be chosen by the Association of Municipalities of Ontario.

"2. One person to be chosen by the city of Toronto.

"3. One person who is representative of school boards to be chosen in accordance with subsection (3).

"4. One person to be chosen by the Ontario Association of Police Services Boards.

"5. Two persons who are representative of the other participating employers, to be chosen in accordance with subsection (4).

"6. Two persons to be chosen by the Canadian Union of Public Employees (Ontario).

"7. One person to be chosen by the Police Association of Ontario.

"8. One person to be chosen by the Ontario Professional Fire Fighters Association.

"9. One person who is representative of other members of the OMERS pension plans, to be chosen in accordance with subsection (5).

"10. One person to be chosen by the Association of Municipal Managers, Clerks and Treasurers of Ontario.

"11. One person who is representative of former members of the OMERS pension plans, to be chosen in accordance with subsection (6).

"First appointments

"(2) Despite subsections (1), (3), (4), (5) and (6), the Lieutenant Governor in Council shall appoint the first members of the administration corporation and shall specify in the appointment under which paragraph of subsection (1) each appointment is being made.

"Representative of school boards

"(3) The person referred to in paragraph 3 of subsection (1) is to be chosen by the Ontario Public School Boards' Association and his or her replacement is to be chosen by the Ontario Catholic School Trustees' Association; thereafter, the replacement is to be chosen on an alternating basis by the associations.

"Representatives of other participating employers

"(4) The two persons referred to in paragraph 5 of subsection (1) are to be chosen as follows by those employers who are not members of an organization described in paragraph 1 or 4 of subsection (1) or in subsection (3):

"1. The first person is to be chosen by the employer who has the greatest number of members in the primary pension plan.

"2. The second person is to be chosen by the employer who has the second-greatest number of members in the primary pension plan.

"3. When the term of office of the first person expires, his or her replacement is to be chosen by the employer who has the third-greatest number of members in the primary pension plan on the expiry date of the first person's term.

"4. The subsequent replacement for a member is to be chosen by the employer who has the next-greatest number of members in the primary pension plan, until all employers have chosen a person.

"5. When all employers have chosen a person, the next replacement is to be chosen by the employer who has the greatest number of members in the primary pension plan, and the steps described in paragraphs 2 to 4 are repeated.

"Representative of other members

"(5) The person referred to in paragraph 9 of subsection (1) is to be chosen as follows on behalf of those members of the OMERS pension plans who are not



represented, directly or indirectly, by an organization described in paragraphs 6, 7 or 8 of subsection (1):

"1. The administration corporation shall make inquiries to determine what organizations, if any, represent any of the applicable members of the OMERS pension plans and to determine how many of those members each organization represents.

"2. The administration corporation shall rank the organizations according to the number of those members that each of them represents, and the organization representing the greatest number of those members is the largest organization.

"3. The administration corporation shall invite the largest organization to choose the person within the period specified by the Administration corporation.

"4. If the organization fails to choose a person within the specified period, the administration corporation shall invite the next-largest organization to choose the person within the period specified by the administration corporation. This step is repeated until the person has been chosen.

"5. When a person's term of office expires, the administration corporation shall invite the organization that is the next-largest at the time the replacement person is required to choose the person. This step is repeated when replacement persons are required until all the organizations have been invited to choose a person.

"6. When all the organizations have been invited to choose a person, the administration corporation shall invite the largest organization to choose the next replacement person, and the steps described in paragraphs 3 to 5 are repeated with necessary modifications.

"Representative of former members

"(6) The person referred to in paragraph 11 of subsection (1) is to be chosen as follows on behalf of former members of the OMERS pension plans:

"1. The administration corporation shall make inquiries to determine what organizations, if any, represent any of the former members of the OMERS pension plans and to determine how many former members each organization represents.

"2. The administration corporation shall rank the organizations according to the number of those former members that each of them represents, and the organization representing the greatest number of those members is the largest organization.

"3. The administration corporation shall invite the largest organization to choose the person within the period specified by the administration corporation.

"4. If the organization fails to choose a person within the specified period, the administration corporation shall invite the next-largest organization to choose the person within the period specified by the administration corporation. This step is repeated until a person is chosen.

"5. When a person's term of office expires, the administration corporation shall invite the organization that is the next-largest at the time the replacement person is required to choose the person. This step is repeated when replacement persons are required until all the organizations have been invited to choose a person.

"6. When all the organizations have been invited to choose a person, the administration corporation shall invite the largest organization to choose the next replacement person, and the steps described in paragraphs 3 to 5 are repeated with necessary modifications.

"Term of office

"(7) The term of office of the members of the Administration corporation is three years.

"Same

"(8) Despite subsection 33(4) and subsection (7) of this section, each of the first members of the administration corporation appointed under subsection (2) shall be appointed to hold office for a period not to exceed three years, as specified by the Lieutenant Governor in Council.

"Vacancy

"(9) If a person appointed under subsection (2) ceases to hold office before his or her term of office expires, the person or organization that chooses the members of the administration corporation under the paragraph of subsection (1) under which the first member was appointed shall choose his or her replacement to hold office for the remainder of the unexpired term.

"Same

"(10) If a person who was not appointed under subsections (2) or (9) ceases to hold office before his or her term of office expires, the same person or organization that chose the person may choose his or her replacement to hold office for the remainder of the unexpired term.

"Chair

"(11) The chair of the administration corporation is to be chosen by the members of the administration corporation from among the members."

That's it.

**The Chair:** I don't suppose you want to explain it, do you?

**Mr. Duguid:** I'm happy to explain it. The chart is in front of everybody. Do members wish a further explanation?

**Mr. Hardeman:** I'm not sure which paragraph it was in, so if you could read it again.

No, I have a couple of questions, if I might. It's not the way it's written, but it's the issue of the two persons for AMO and one person for the city of Toronto, recognizing the size and corresponding need to be represented on the board of the city of Toronto. Also, at this point in time, Toronto is not part of AMO. If it was to change its mind next year, would it be possible then to have AMO appoint a member from Toronto and also Toronto get another appointment?

**Mr. Duguid:** It wouldn't be possible for AMO to increase its representation. Oh, do you mean, would it be possible for AMO to appoint a representative from Toronto?

**Mr. Hardeman:** Yes. Like AMO gets to appoint two members—

**Mr. Duguid:** AMO will be entitled to appoint whomever they wish. They may appoint somebody from



Toronto anyway. They could do that now. I would expect, yes, they could do that. Staff may have further comment.

**Mr. Hardeman:** There are two things that have come—

**The Chair:** Mr. Hardeman, can we just get clarification on that question? I think staff wanted to respond.

**Ms. Hope:** Yes. The first corporation would be appointed according to this composition. However, subsequently, if there were a change, whether it was with AMO and Toronto or with other organizations that are named, the sponsors corporation would have the ability, by a two thirds majority vote, to adjust the composition, after the three-year period of that initial board. If there was a change in organizational structure, the sponsors corporation could reflect that in their composition, or the administration corporation.

**Mr. Hardeman:** But it is inferred in this document that in fact they will not change the composition of the board, because of the fact it points out that after they've been appointed the first time, the replacements are picked in this way. So we're making the assumption that this is the format that they will continue to use.

**Ms. Hope:** This is the default format, but the sponsors corporation will have the capacity beyond the first three-year period to change this composition, if they so choose.

1510

**Mr. Hardeman:** If I could just go on, in the last page you talk about if the person is appointed and ceases to hold office, that same organization appoints someone else. So what's the requirement to hold office, to be appointed? I don't see anywhere else in the bill that talks about—

**Ms. Hope:** Are you asking about the term of office?

**Mr. Hardeman:** It's just to hold office. At AMO, the requirements for any appointments they make—if you want to be on the board of directors at AMO, you have to be an elected member of a municipal council. As soon as you lose your right to sit on municipal council, you also lose your ability to sit on the board of directors. Am I to infer from this that that's also true here?

**Mr. Duguid:** AMO would be entitled to appoint whomever they wish. They may go outside of their organization and appoint somebody who's involved in pension funds—an expert—or they may appoint a municipal councillor, if they so choose. That would be at their discretion.

**Ms. Hope:** The reference to “ceases to hold office” is referring to the corporation, not to political appointments.

**Mr. Hardeman:** Okay. Thank you.

Now, the other thing it relates to is that Toronto is not presently a member of AMO. There are other municipalities who are not members of AMO, so they are no longer represented in any form on the pension board. There are no municipal representatives for municipalities who are not members of AMO. So if you're not a member of the organization, you're not represented on the AMO board?

**Mr. Duguid:** I believe that would be correct. Toronto's representation—they represent 20% in terms of

the members' population. What they're getting is about 14% representation. They're getting some representation, but it's certainly not based on the number of employees they have in the plan.

**The Chair:** Mr. Hardeman, staff would like to elaborate.

**Ms. Hope:** To further clarify, there are two positions on the administration corporation for other employers, so municipalities which were not members of AMO would be eligible to be considered in that rotation as part of other employers.

**Mr. Hardeman:** Municipalities who are not members of AMO would be eligible to be members of other employers?

**Ms. Hope:** They would be eligible to be appointed under the other employer seat, yes. They would be part of that rotation along with the other employers in OMERS who aren't part of one of these organizations that are named.

**The Chair:** Any further questions?

**Ms. Horwath:** I guess I'm going to start with a question, and that is, why is it that the government, in its composition of the administration corporation, maintained the position of the municipal clerks and treasurers of Ontario when they didn't do so in the sponsors corporation? What makes it different that, notwithstanding the representations that we heard—which, coming from the municipal sector, I agree with—treasurers and clerks are on the management side of the table and therefore, in my opinion, upset the balance? If you look at the administration corporation, even the way it's presented in this chart, employer representatives equal seven and employee representatives equal seven, although one of those seven is in fact more on the management side of the table than anything else. I think it was clear from the deputations that we received that this was a major sticking point for most of the unions, most of the employee representatives. So I'm just trying to figure out why it was acknowledged—I'm assuming it was acknowledged—as problematic in the composition of the sponsors corporation, but here in the administration corporation—in the effective fiduciary body, if that's the way the government has been describing it—that seat is maintained for management representation on the employee side of the equation?

**Mr. Duguid:** The Association of Municipal Clerks and Treasurers of Ontario is there to represent the interests of unaffiliated, non-unionized management, which makes up about 19.8% of the fund. We considered the concerns that were raised and we felt that the Ontario Secondary School Teachers' Federation, which contributed a great deal to discussions around this and has a great deal of knowledge in terms of pension funds, would be an appropriate representative to permanently have on the sponsors committee. So we elected to take AMCTO off the sponsors committee, but we still felt that they represent a great deal of employees, and given the fact that when you get to the administration corporation, you're there to perform a fiduciary duty, and your



allegiances in terms of your representation are to be left, really, at the door when it comes to performing that duty, they still have a role to play, and those employees should have some representation in there.

**Ms. Horwath:** If I could just make a final comment on that, it seems to me that in all of the presentations that we heard from municipalities, my own municipality included—I heard from my local municipality as well—the reality is that in terms of commenting on this bill and what might occur as a result of it being implemented, the authoritative voice on all of these matters, in most cases indicating that the government was going down the wrong road when it came to the way they were dealing with the OMERS pension plan, was always the voice of the municipal treasurer or the general manager of finance and corporate services or whatever the title might be. Certainly, it would be that person who was representing the interests of the employer in all of the discussions we've had so far. So I think it's inappropriate, and quite frankly unbalanced, to say that, on the one hand, those people have been speaking with the voice of the employer, and then all of a sudden, in the government's decision on how to set up the administration corporation, they're listed as an employee representative, while through this whole process they've been raising the issues and in fact providing the information upon which these issues are being raised by municipalities with the hat of the employer on. It's really difficult, in my mind anyway, to understand the rationale of putting them as an employee representative, particularly since the entire history of this bill, from the first day of public hearings, has had those very people, those individuals, with the employer hat on. So when the criticism has come up in regard to putting those people on the employee side of the table, it would seem to me a no-brainer that the government would acknowledge that that's problematic.

Again, if the principle is that everybody goes in with a fiduciary duty, then there's no point in writing a chart that says "employee" and "employer." What's the point? Why characterize the administration corporation as being a balance of voices between seven employee and seven employer if in fact what we're saying is it really doesn't matter, because you all have a fiduciary responsibility to act in the best interests of the plan on the administration committee? You can't have it both ways. You're either all coming in with one hat on and nothing do with the affiliated organization, or you're not.

I still think the government could have been a lot more sensitive to the issues and concerns that were raised around having employer representatives characterized as employee representatives in the structure of the administration corporation. I think you missed the ball on this one completely, notwithstanding the rationale that you're bringing forward around the fact that everybody comes with their fiduciary hat on to fulfill those obligations in their role as appointees to this corporation. The bottom line is, even your own representations differentiate between employer and employee. It's apparent, particularly in terms of the Association of Municipal

Clerks and Treasurers of Ontario, that they really come from an employer perspective.

Again, I think it's important that that gets stated clearly. I think it's still problematic. I can't support not only the specifics around that, but I can't support the philosophy that the government is bringing forward in regard to keeping them on the administration corporation as representatives of employees.

1520

**The Chair:** Any further discussion? Seeing none, all those in favour of the motion? This is the long one, folks. It was a while ago since we heard it. All those against? That's carried.

Shall section 44, as amended, carry? All those in favour? All those opposed? That's carried.

**Mr. Hardeman:** I outvoted them.

**The Chair:** Almost. Just by a hair.

Section 45: Ms. Horwath, you have the motion.

**Ms. Horwath:** I move that paragraph 5 of subsection 45(1) of the bill be amended by striking out "Three" and substituting "Four."

**The Chair:** Any debate or discussion? Seeing none, all those in favour of the motion? All those opposed? That's lost.

The next motion.

**Ms. Horwath:** I move that paragraph 7.1 of subsection 45(1) of the bill be struck out.

**The Chair:** Any discussion? All those in favour? All those opposed? That's lost.

Shall section 45 carry?

**Mr. Duguid:** Madam Chair, just a quick comment: I think, given the motions we've passed already, it makes section 45 redundant, so we'll be voting against the entire section. We've already dealt with it in previous amendments.

**The Chair:** Okay. All those in favour of section 45? All those against? That's lost.

Section 45.1, government motion; Mr. Lalonde.

**Mr. Lalonde:** I move that clause 45.1(1)(a) of the bill be amended by striking out "or the assumptions to be used in calculating."

**The Chair:** Any discussion?

**Ms. Horwath:** Can I just ask what that amendment in effect does?

**The Chair:** Mr. Duguid, can you respond?

**Mr. Duguid:** I have a note on this, but I think it would be best to refer it to staff. It's pretty technical.

**Ms. Hope:** Sure. Essentially, by removing these few words, we would remove the capacity for the Lieutenant Governor in Council, through regulation, to usurp the role of the administration corporation with respect to actuarial assumptions. So it leaves the actuarial assumption issue solely in the hands of the administration corporation.

**Ms. Horwath:** Devolves to it.

**Ms. Hope:** Yes.

**The Chair:** Okay. Clear as mud?

No more discussion? All those in favour of the motion? All those opposed? That's carried.



Shall section 45.1, as amended, carry? All those in favour? All those opposed? That's carried.

Shall section 46 carry? All those in favour? All those opposed? That's carried.

Shall section 47 carry? All those in favour? All those opposed? That's carried.

Shall section 48 carry? All those in favour? All those opposed? That's carried.

Shall section 49 carry? All those in favour? All those opposed? It carries.

Shall sections 50, 51, 52, 53, 54, 55 carry? All those in favour? All those opposed? Those carry.

Section 56: Mr. Duguid, do you want to do the next motion? It's page 48.

**Mr. Duguid:** I move that section 56 of the bill be amended by striking out "sections 38 to 45" and substituting "sections 38 to 44."

Section 56 provides for the transition sections of the bill, subsections 23(2) and 33(2) and sections 38 to 45, to be repealed on December 31, 2009. This motion would remove section 45 as one of the sections that need to be repealed on December 31, 2009.

**The Chair:** Any discussion?

**Ms. Horwath:** What is section 45?

*Interjection.*

**Ms. Horwath:** Oh, the one we just talked about. Okay.

**The Chair:** Any further discussion? Seeing none, all those in favour of the motion? All those opposed? That carries.

Shall section 56, as amended, carry? All those in favour? All those opposed? That's carried.

Shall sections 57 and 58 carry? All those in favour? All those opposed? Those carry.

Mr. Hardeman, you look puzzled.

**Mr. Hardeman:** You were going so fast.

**The Chair:** Sorry. There are no amendments within those sections, so I'm going to go right back to the beginning now. I'm just putting people on notice that all of the things that were—

**Mr. Hardeman:** You voted, Madam Chair, on section 58?

**The Chair:** Yes, I did.

**Mr. Hardeman:** That's the title of the bill?

**The Chair:** No, the title is separate. I did 58.

**Mr. Hardeman:** Short title of the bill.

**The Chair:** I guess so, yes. I did it, sorry.

**Mr. Hardeman:** I was a little concerned. I didn't like the title of the bill.

**The Chair:** We're going to get to the title. I'm going back to page 1, to amendment 1, which was stood down, as I recall. Ms. Horwath, you have the floor.

**Ms. Horwath:** Do I need to read it again?

**The Chair:** I believe it's already read into the record, so we're at the point where we would discuss it. I presume Mr. Duguid has a comment on it now.

**Mr. Duguid:** Yes. I spent a considerable amount of time with staff during the break trying to figure out whether this is something we could support. I was

advised that it's overly broad because it replies to the main plan and not the supplementary plan, and allows employers to change the NRA for the main plan to 60 years. I think their conclusion was that this is something that should be left to the sponsors corporation. We spent a considerable time looking at it and unfortunately I couldn't reach a conclusion to be able to support it.

**Ms. Horwath:** My understanding of this motion is basically to as-of-right acknowledge or recognize the NRA 60 provision for paramedics, to put them on an even keel in an upfront way in the legislation as opposed to going through the process of the sponsors corporation, two thirds majority decision, which I understand is what would be required. This was a way to acknowledge, not only in theory but in action, the requests and what we thought were the commitments of the government around emergency workers, paramedics particularly.

**The Chair:** Any other questions or comments?

**Mr. Hardeman:** My understanding was that the debate we had with the paramedics dealt with this issue. In fact, presently it's 65 and the supplementary benefit through the NRA 60 wouldn't work unless this was changed in their act to make it a retirement age of 60. Am I correct in that assumption?

*Interjection.*

**Mr. Hardeman:** That's what this one does? Having said that, what happens to that if this is passed and there are no municipalities or no one who goes into the supplementary plan? Does retirement then go into the 60 anyway, without having sufficient contributions to get their full pension? I don't know whether we can get the two together and still keep them apart, recognizing that this is an amendment to the Ambulance Act, not to this act.

**The Chair:** Any further discussion? Staff, do you want to jump in?

**Ms. Hope:** Let's see if I can help. The issue of accessing the benefits in the supplemental plan and the issue of whether individual groups of paramedics can move from NRA 65 to 60 aren't distinct issues. For example, the 2.33% accrual rate benefit that is going to be in the supplemental plan can be accessed by an individual regardless of whether they are NRA 60 or 65. So it's not necessary for an individual to be in the NRA 60 group to access the benefits in the supplemental plan. I'm not sure if that helps.

**Mr. Hardeman:** So then I guess the question becomes—maybe to the table—is this an appropriate amendment to this bill? It's not required for the function of the bill and it is just going into the Ambulance Act and changing the 65 to 60.

**Ms. Hope:** It doesn't change the Ambulance Act, as I understand it.

**Ms. Horwath:** What this amendment does is refer to the Ambulance Act, but it's language in this legislation that allows the paramedics, as of right—it's my understanding, anyway—to be considered for NRA 60 and not have to go through the hoop of the sponsors corporation making that determination or that decision. That's my understanding of why this is here.



1530

**The Chair:** Any further discussion? All those in favour of the motion? All those opposed? That's lost.

I believe the next motion that was stood down was government motion 2. Mr. Duguid.

**Mr. Duguid:** I'll read this motion into the record. I just want to make sure I've got the right one here. It amends just slightly the original motion we put forward.

**The Chair:** So whatever was 2, this is to replace 2?

**Mr. Duguid:** This is to replace 2.

**The Chair:** So the motion 2 that you have in your book, this is the replacement.

**Mr. Duguid:** It's fairly minor. I move that subsection 3(3) of the bill be struck out and the following substituted:

"Pension funds

"(3) The pension funds that are governed by the Ontario Municipal Employees Retirement System Act immediately before that act is repealed are continued."

The original motion continued and said, "as the pension funds for the primary pension plan." This was one of the recommendations made to the committee by OMERS. If you want an explanation for it, you will have to go to staff because I would not have any ability to explain this to you.

**Mr. Hardeman:** Looking at the two motions now, the yellow and the white, the difference is that the one just says, "are continued," and the other says, "are continued as the pension funds for the primary pension plan." Does that mean that to be continued, they would not have to stay as pension funds for the primary pension plan?

**Ms. Hope:** I believe the issue is that OMERS was concerned that by just referring to the primary pension plan, we were failing to also continue the other funds, such as the retirement compensation arrangement fund or the other funds that aren't about the primary pension plan. So I think this is the same intent but is most inclusive.

**Mr. Hardeman:** If I get this right, then, the other funds have now all become pension funds.

**Ms. Hope:** Retirement compensation arrangements are existing arrangements on top of pension funds. In legal terms, I think they're often described with different words.

**The Chair:** It's a test. You passed the test. Any further questions? All those in favour of the motion? All those opposed? That carries.

Shall section 3, as amended, carry? All those in favour? All those opposed? That is carried.

Moving on to section 4, the NDP motion that was stood down. Ms. Horwath.

**Ms. Horwath:** I move that section 4 of the bill be amended by adding the following subsections:

"Restriction on use of primary pension plan assets

"(2) No assets of the primary pension plan shall be used for the purpose of paying any optional benefit under a supplemental plan or funding the payment of any other liability of a supplemental plan.

"Same

"(3) In the event that any supplemental plan, or any provision of any supplemental plan, increases the actuarial liabilities of the primary pension plan, the supplemental plan shall transfer assets to the primary pension plan sufficient to fund the increased liability.

"Same

"(4) All costs related to the transfer of assets to the primary pension plan under subsection (3) shall be paid from the supplemental pension plan."

What these three pieces do is once again tighten the language around cross-subsidization, which has been an ongoing concern throughout the public hearings, throughout the deputations we've heard. There is still significant concern around that issue. In combination, these three pieces together cover off all eventualities and create a comfort zone for those deputants who were still concerned about the likelihood of cross-subsidization.

**Mr. Duguid:** We took a close look at this motion as well. Motions 3 and 4 we cannot support. The transfer of funds is generally prohibited under federal and provincial legislation. Section 14 of the act accomplishes this policy objective by clearly prohibiting rebound costs, by making people in the base plan who are members of the supplementary plan pay all costs associated with supplementary plans. So subsections (3) and (4) we cannot support.

Subsection (2), however, we can support. Staff have advised that, in their view, it's not necessary, but we don't have a problem with it, so we'll be happy to support it. However, we would ask that we vote on each of these sections separately.

**Mr. Hardeman:** In a question to the parliamentary assistant's comments, I wondered if the legal branch could explain to me what's wrong with (3) and (4).

**Ms. Hope:** As I understand it, federal pension law prohibits the transfer of money between pension funds except under very specific circumstances. So these provisions would not be permitted under federal law.

**Mr. Hardeman:** I guess my question would be, under pension law, if the supplemental plan creates the liability in the primary plan, the wording may be wrong, but it wouldn't be transferring funds, it would be covering its own liabilities, but outside their own fund.

**Ms. Hope:** Section 14 of the bill addresses this issue by saying that the costs that are created within the base plan because of the existence of supplemental plans have to be taken into account, and those costs need to be paid for by the members of the main plan who are also members of the supplemental plan. Section 14 sets out a methodology for dealing with it within the main plan funds and not referring to a transfer of funds, as this motion does, which we understand is not permitted under federal law.

**Mr. Hardeman:** So it's reasonable for me to assume, then, that because of the other section, this will never be needed?

**Ms. Hope:** Yes.

**Mr. Hardeman:** So they will never be asked to supersede the law because it will never happen.

**Ms. Hope:** It should never happen.



**Mr. Hardeman:** I see no reason not to pass it. With that, Madam Chair, I'm going to support this motion. I think it's an insurance policy on all the other sections.

**The Chair:** I'm glad, but I think it's about to be withdrawn. Are you not going to withdraw it and reissue it?

**Ms. Horwath:** No. I was hoping that, as per the parliamentary assistant's suggestion, we could go section by section, if that's acceptable.

**The Chair:** That's the clerk's department.

**The Clerk of the Committee:** The motion on the floor is the whole motion, so we have to vote on the whole motion, or you can re-move it section by section. It's just not going to be very tidy if you—because you've moved the whole motion into the record and we've debated it, we should vote on the whole motion.

**Ms. Horwath:** But then once we vote on the whole motion, I can't re-table it section by section, is that right?

**The Clerk of the Committee:** If you move your other motion, which just deals with subsection (2), that's a different motion.

**Ms. Horwath:** But why just subsection (2)? Because the government's prepared to support that? I can't also re-move subsections (3) and (4) separately?

**The Clerk of the Committee:** You should have done them separately first and then—

**Ms. Horwath:** I guess my point is that either we can put them all in separately, because that's the fair way to treat it, or we just take them all together. It doesn't seem appropriate to me that we can say, "Well, because the government's prepared to support one piece, we can only re-table that one piece." We should be able to re-table all three. Do you know what I'm saying? That would be the only fair thing. If I'm able to then—

**The Clerk of the Committee:** Move each one separately.

**Ms. Horwath:** —move each one separately—

**The Clerk of the Committee:** Withdraw this one, move just subsection (2) and vote on that, and then move just subsection (3) and vote on that.

**Ms. Horwath:** That would be better, from my perspective.

**Mr. Lalonde:** On a point of order, Madam Chair: If we could unanimously support that we go section by section, would that be acceptable?

1540

**The Chair:** I don't think it wasn't acceptable, it just wasn't clean. I think that was the direction, that it was not as clean a motion. This is procedurally cleaner. I think it will still achieve the same purpose. The mover gets to move the motions and get support where she can.

**Ms. Horwath:** So then I'll withdraw the motion on subsections 4(2), 4(3) and 4(4) of the bill, and instead I move that section 4 of the bill be amended by adding the following subsection:

"Restriction on use of primary pension plan assets

"(2) No assets of the primary pension plan shall be used for the purpose of paying any optional benefit under

a supplemental plan or funding the payment of any other liability of a supplemental plan."

**The Chair:** Any discussion? All those in favour? All those opposed? That's carried.

You have the floor for the following two motions.

**Ms. Horwath:** I move that section 4 of the bill be amended by adding the following subsection:

"Restriction on use of primary pension plan assets

"(3) In the event that any supplemental plan, or any provision of any supplemental plan, increases the actuarial liabilities of the primary pension plan, the supplemental plan shall transfer assets to the primary pension plan sufficient to fund the increased liability."

**The Chair:** Any discussion? All those in favour? All those opposed? That's lost.

**Ms. Horwath:** I move that section 4 of the bill be amended by adding the following subsection:

"Restriction on use of primary pension plan assets

"(4) All costs related to the transfer of assets to the primary pension plan under subsection (3) shall be paid from the supplemental pension plan."

**The Chair:** Any discussion? All those in favour? All those opposed? That's lost.

Shall section 4, as amended, carry? All those in favour? All those opposed? That carries.

The next area that we stood down was motion 15, section 10.1. That was a government motion. Mr. Duguid.

**Mr. Duguid:** I'll read this motion out.

**The Chair:** Is this an amended motion?

**Mr. Duguid:** It is an amended motion.

**The Chair:** Can we wait till everybody has it in front of them, please? Just a second.

**Mr. Duguid:** Sure. The amendment simply strikes out the definition section at the end of the motion, so it's not too complicated.

I move that section 10.1 of the bill be amended by adding the following subsections:

"Amount of benefit under supplemental plan

"(7) The amount of a benefit available to a member under the primary pension plan shall be deducted from the amount of a benefit available to a member under a supplemental plan described in subsection (3) and the cost of credit or contributions for the benefit under the supplemental plan shall be reduced accordingly.

"Election to purchase credit for benefit in supplemental plan

"(8) A member may elect to purchase credit for a benefit in a supplemental plan described in paragraph 8 of subsection (3) only if,

"(a) the member is employed by an employer participating in the OMERS pension plans who has consented to provide the benefit;

"(b) the member makes the election within 24 months after the date the employer consented to provide the benefit; and

"(c) the member makes the election to purchase credit for the benefit subject to any conditions determined by the administration corporation on the advice of the actuary.

“Same

“(9) Subject to subsection (7), the purchase cost of a credit for a benefit described in paragraph 8 of subsection (3) shall be equal to the present value of that benefit.”

**The Chair:** Any discussion?

**Ms. Horwath:** Could we get a brief description of the effect of the amended motion and why it needed to be amended?

**Mr. Duguid:** I’m definitely going to go to staff for that because it was sort of a legal interpretation between OMERS and our own staff.

**Ms. Hope:** The definition was removed at OMERS’ advice. They felt that the definition deferred somewhat from the definition in the plan text, so it would be more appropriate to remove the definition here.

**Ms. Horwath:** So that’s the amendment. What effect does the amended motion as a whole have on the bill?

**Ms. Hope:** It provides a bit of additional instruction to the administration corporation on the implementation of the supplemental plan that’s outlined in 10.1. Because it makes reference to the parts that were amended on first reading to opportunity for buyback, this just provides a bit more direction on how that is to be undertaken.

**The Chair:** Any further questions? Seeing none, all those in favour of the motion? All those opposed? That carries.

Shall section 10.1, as amended, carry? All those in favour? All those opposed? That carries.

Our second-to-final motion is number 17.

**Mr. Duguid:** Motion 17 was a technical amendment and we’re just going to withdraw it.

**The Chair:** Okay, 17 is withdrawn.

Shall section 11 carry? All those in favour? All those opposed? That carries.

I believe we’re at your favourite part, Mr. Hardeman. Shall the title of the bill carry? All those in favour?

**Mr. Hardeman:** At this point, Madam Chair, I would request a recorded vote.

**The Chair:** A recorded vote has been requested on the title of the bill.

**Ayes**

Dhillon, Duguid, Lalonde, Matthews, Rinaldi.

**Nays**

Hardeman, Horwath.

**The Chair:** That’s carried.

Shall Bill 206, as amended, carry? All those in favour?

**Mr. Hardeman:** Recorded vote.

**The Chair:** A recorded vote has been requested.

**Ayes**

Dhillon, Duguid, Lalonde, Matthews, Rinaldi.

**Nays**

Hardeman, Horwath.

**The Chair:** That’s carried.

Shall I report the bill, as amended, to the House? All those in favour?

**Mr. Hardeman:** Recorded vote.

**The Chair:** A recorded vote has been requested.

**Ayes**

Dhillon, Duguid, Lalonde, Matthews, Rinaldi.

**Nays**

Hardeman, Horwath.

**The Chair:** That’s carried.

This concludes our consideration of Bill 206. I’d like to thank all my colleagues on the committee for their work on this bill. The committee also thanks the ministry staff and members of the public who have contributed to this committee’s work.

This committee now stands adjourned until the call of the Chair.

*The committee adjourned at 1546.*











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#### Also taking part / Autres participants et participantes

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Ministry of Municipal Affairs and Housing

Mr. Tom Melville, legal counsel,

Ministry of Municipal Affairs and Housing

#### Clerk / Greffière

Ms. Tonia Grannum

#### Staff / Personnel

Ms. Susan Klein, research officer,  
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Second Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 26 April 2006

# Journal des débats (Hansard)

Mercredi 26 avril 2006

## Standing committee on general government

Stronger City of Toronto  
for a Stronger Ontario Act, 2006

## Comité permanent des affaires gouvernementales

Loi de 2006 créant  
un Toronto plus fort  
pour un Ontario plus fort

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 26 April 2006

Mercredi 26 avril 2006

*The committee met at 1548 in room 151.*

## ELECTION OF VICE-CHAIR

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. We're here today to commence public hearings on Bill 53, the Stronger City of Toronto for a Stronger Ontario Act, 2006.

Our first item of business is the election of a vice-chair. Are there any nominations?

**Mr. Kevin Daniel Flynn (Oakville):** I woke up about 3 o'clock in the morning and I had this thought: that the person who would make the best vice-chair for this committee would be the member from Stormont-Dundas-Charlottenburgh, Mr. Jim Brownell.

**Mr. Brad Duguid (Scarborough Centre):** A visionary.

**Mr. Flynn:** It was a vision, so I'll move it.

**The Chair:** Are there any other nominations? Seeing none, Mr. Brownell, I presume you accept that nomination?

**Mr. Jim Brownell (Stormont-Dundas-Charlottenburgh):** I so accept.

**Mr. Ernie Hardeman (Oxford):** No campaign speech, no nothing?

**Mr. Brownell:** I accept with an open heart, ready to do what work is required on the committee.

**Mr. Hardeman:** That's the trouble with only one nomination: We just don't get a real campaign going.

**Mr. Duguid:** Ernie, I tried to nominate you, but they wouldn't let me.

**The Chair:** Thank you. Seeing there are no other applicants for this great job, I declare Mr. Brownell elected as vice-chair of the standing committee on general government. Congratulations.

## SUBCOMMITTEE REPORT

**The Chair:** Our next item of business is the report of the subcommittee on committee business. Could I ask someone to move the subcommittee report and read it into the record? Do I have a volunteer?

**Mr. Mario G. Racco (Thornhill):** Ask the vice-chair.

**The Chair:** The vice-chair? I think that's a good idea. Mr. Brownell, would you mind reading the subcommittee report?

**Mr. Brownell:** Okay. I wasn't at that meeting, and I was hoping that somebody who was at the meeting—okay. I'll read the report.

Your subcommittee on committee business met on Thursday, April 13, 2006, and recommends the following with respect to Bill 53, An Act to revise the City of Toronto Acts, 1997, (Nos. 1 and 2), to amend certain public Acts in relation to municipal powers and to repeal certain private Acts relating to the City of Toronto.

(1) That the committee hold up to four days of public hearings at Queen's Park on Wednesday, April 26, Monday, May 1, Wednesday, May 3, and Monday, May 8, 2006, and two days of clause-by-clause consideration on Wednesday, May 10, and Monday, May 15, 2006.

(2) That the committee clerk, with the authority of the Chair, post information regarding the committee's business on the Ontario parliamentary channel, the committee's website and one day in the Toronto Star.

(3) That the Chair and committee clerk be authorized to schedule any requests received by April 13, 2006, and that these witnesses be scheduled on Wednesday, April 26, and Monday, May 1, 2006.

(4) That interested people who wish to be considered to make an oral presentation on Bill 53 should contact the committee clerk by 5 p.m., Monday, April 24, 2006.

(5) That on Tuesday, April 25, 2006, the committee clerk supply the subcommittee members with a list of requests to appear received after April 13, 2006.

(6) That, if required, each of the subcommittee members supply the committee clerk with a prioritized list of the names of witnesses they would like to hear from by 4 p.m., Wednesday, April 26, 2006, and that these witnesses must be selected from the original list distributed by the committee clerk to the subcommittee members.

(7) That the committee clerk, in consultation with the Chair, be authorized to schedule witnesses from the prioritized lists provided by each of the subcommittee members and that these witnesses be scheduled on Wednesday, May 3, and Monday, May 8, 2006.

(8) That, if all groups can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties and no party lists will be required.

(9) That groups and individuals be offered 15 minutes in which to make a presentation.

(10) That on Wednesday, April 26, the minister be invited to make a 15-minute presentation followed by 15 minutes of questions and answers (to be divided equally among the three parties).

(11) That the deadline for written submissions be 12 noon, Monday, May 8, 2006.

(12) That the research officer prepare a summary of the testimony heard.

(13) That a deadline (for administrative purposes) for filing amendments be determined on the last day of public hearings.

(14) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair:** Thank you very much, Mr. Brownell. Are there any comments or questions on the report of the subcommittee?

**Mr. Hardeman:** I'm not suggesting that there's anything wrong with the report as it was prepared by the subcommittee, but there was an assumption made during the subcommittee meeting—at least what I came away with. I think it goes to number 7. I guess that's where it starts: "That the committee clerk, in consultation with the Chair, be authorized to schedule witnesses from the prioritized lists provided by each of the subcommittee members." It was assumed that, because of the tight time frames—and we had some discussions at the time that the advertising would hopefully go out before the holiday weekend, but as it turned out, that didn't happen. So in fact the time frame for the advertising and today, when the first would be heard, was going to be very, very short. That's why it was decided that we would schedule the first two days of hearings from the list where people had applied to be heard prior to any advertising being done—in fact, prior to the bill being referred to the committee for review. We'd then advertise it and we would then hopefully have sufficient time in the other two days to hear all those who wanted to be heard in subsequent days.

As the numbers have now come forward, it seems that by the deadline, we had more people apply to be heard than what these extra two days will allow us to hear. My understanding was that if that was necessary, we would then have one more day of hearings in order to accommodate those who had applied prior to the deadline. If one doesn't do that, then I think we have this problem that in fact we gave preferential treatment to people who knew what was happening and that they got their name in first because they were not picked out of a list; they were just granted an opportunity to be heard. The other two days we're dividing up with all those who, after we advertised, knew about it, so then they sent in their application.

I'd like to suggest that, as a modification or an amendment to the plan, on the first day that's recommended for clause-by-clause, we schedule one more day of hearings

to hear all those who had their application in to be heard prior to the deadline.

**The Chair:** Speaking to the amendment, Mr. Duguid.

**Mr. Duguid:** One of the problems we have right now is, we have a considerable amount of legislation that we have to get through, that we'd like to get through for this spring session. This is one of the very important pieces of legislation that we're very determined, as a government, to ensure is passed. It's important to the city of Toronto and, frankly, it's important to the entire province that this legislation get dealt with.

I don't know how many deputants have applied that are outstanding right now, but if there are some—and I don't think there are a great many—perhaps we could consider, not today but for subsequent days, looking at maybe lowering the time given to each deputant to try to get those other deputants in. That's something we'd consider. I think we're looking at 15-minute deputations. Perhaps we could amend that to 10-minute deputations, which will probably provide enough time, I think, to get in the outstanding deputants that want to speak that are on the list right now, although, again, I'm not fully briefed on the number that is outstanding at this point in time.

**The Chair:** Maybe to assist in everyone's decision, we could ask the clerk how many deputants are outstanding.

**The Clerk of the Committee (Ms. Susan Sourial):** These are deputants who applied by the 5 o'clock deadline. There are seven that were not able to be scheduled. We have also had applicants since the deadline, but up to the deadline there are seven that couldn't get in.

**Mr. Hardeman:** I would be prepared to just add on the seven. In fact, we could hear them all in the first day of the clause-by-clause and then start clause-by-clause at the end of those deputations. In fact, if it requires a full extra day, it would still only prolong or extend the time of the hearings a maximum of three days. Since we are scheduled to be in the Legislature till mid- to the end of June, I don't see that three days longer in committee would in any way infer that this would not be passed prior to the end of the sitting.

I think it becomes very important that the appearance of a public hearing process is at least fair to everyone, and the way it's been so far, it is not fair to everyone. In fact, there was great preference given to those who applied before the bill went to committee.

**Mr. Duguid:** Perhaps the member might want to consider what I'd suggested in terms of lessening the amount of time given to each deputant for future days. I think that would probably free up enough time for us to hear the deputants, and if not, what time is left, maybe we could then look at some kind of an accommodation in that sense. Perhaps a suggestion, to help out, would be that we could meet as a subcommittee after the hearings tonight just to quickly consider what the options are, and if we can come to a suggestion, we can bring it to the committee on our next day of hearings, which is next week. Would that be all right?



**Mr. Hardeman:** I would say, as the clerk is speaking, that one of the challenges is going to be that the time slotted for the people who have been accepted will be at 15 minutes and by next week there will be no opportunity to change that time to 10 minutes or seven and a half minutes. If that's one of the options the parliamentary assistant is suggesting, I've never been at a committee hearing where the time was less than 15 minutes for presentations, because that really doesn't give someone the opportunity to speak to a bill that's—I don't know how many pages, but it's a half an inch thick. I think it's inappropriate to go less than 15 minutes for a presentation.

**The Chair:** Another fly in the anointment is, it's difficult to schedule and give people adequate notice to get here, as the clerk is notifying me.

Does anyone else want to speak to this amendment?

Seeing no further speakers, all those in favour of the amendment? Oh, Mr. Sergio.

**Mr. Mario Sergio (York West):** Madam Chair, before you move, evidently we would like to accommodate especially those who put in their request before the 5 o'clock time. The others we can request that they submit written presentations. There are seven applicants, I believe, that were prior to the deadline. So we are looking at just over an hour, 70 minutes, with seven at 10 minutes each. The committee may want to consider starting a bit earlier and giving them the time before clause-by-clause as an alternative.

1600

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Perhaps if the subcommittee could consider this afterwards, we'll see if we can accommodate, as best we can, those members. I think that's probably the best way to do it. Then we can talk to the clerk and figure how best to do it.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** I don't have any problem with the subcommittee making a decision on it. I guess I would just caution that time is of the essence. If the parliamentary assistant is suggesting that we're going to use the shortening of time, I don't think that's going to be an option we could consider if the subcommittee has to bring it back to the next full committee. In timing, and just to make sure we all understand, the bill is not time-allocated, so how long our clause-by-clause takes is a matter of committee practice. There is nothing that would suggest that the committee's clause-by-clause will be finished the night of the clause-by-clause; it depends whether the committee is prepared to vote. So I would suggest that there seems to be a very good option to just add the delegations that we're speaking of on the first clause-by-clause day, and I think our problems would be solved. But I'm willing to let it go to subcommittee.

**The Chair:** Great. So you're going to step down your amendment, and we will vote on the report of the subcommittee. All those in favour? All those opposed? That's carried.

## STRONGER CITY OF TORONTO FOR A STRONGER ONTARIO ACT, 2005

### LOI DE 2005 CRÉANT UN TORONTO PLUS FORT POUR UN ONTARIO PLUS FORT

Consideration of Bill 53, An Act to revise the City of Toronto Acts, 1997 (Nos. 1 and 2), to amend certain public Acts in relation to municipal powers and to repeal certain private Acts relating to the City of Toronto / Projet de loi 53, Loi révisant les lois de 1997 Nos 1 et 2 sur la cité de Toronto, modifiant certaines lois d'intérêt public en ce qui concerne les pouvoirs municipaux et abrogeant certaines lois d'intérêt privé se rapportant à la cité de Toronto.

### STATEMENT BY THE MINISTER

**The Chair:** I'd like to introduce Minister Gerretsen, who has agreed to be here today. Minister of Municipal Affairs, thank you for coming and agreeing to speak to us for 15 minutes. Following that, each party will have an ability ask you a question, because we've allowed 15 minutes total to ask you questions. Welcome.

**Hon. John Gerretsen (Minister of Municipal Affairs and Housing):** Thank you very much, Madam Chair. It's good to be here.

I would just like to introduce two individuals that are sitting right next to me: On the left is Ralph Walton, who's the director of municipal governance and structures branch within municipal affairs and housing; on my right, Janet Hope, who's the director of the municipal finance branch. They're supported by a number of other staff and individuals from the ministry that are here as well. Of course, in the room as well we have Mayor David Miller and Shirley Hoy, the city manager for the city of Toronto. I understand that the mayor will be presenting after I do.

Let me first of all say that this whole process with respect to the new City of Toronto Act, Bill 53, has been a most exciting, stimulating and rewarding one for me personally and, I know, for the ministry as we've gone through this process. It has been truly something that I've thoroughly enjoyed being involved in. I think that in the long run we will get the best legislation possible in order to make the city of Toronto work and function to the best of its ability, because I think we all benefit from that in the province in Ontario. I too look forward to all of the various views that will be brought forth on this bill from all the deputants. If there are good amendments that come out of that, we will certainly consider them, because only by working collectively can we come up with the best bill for the people of Toronto and Ontario.

It's a very important piece of legislation. I know we say that probably about every piece that's brought before this committee and other committees as well, but I really and truly believe that this will allow the city of Toronto to be brought into the 21st century from a governing viewpoint. We all know the historical background of how



municipalities fit in with respect to provincial and federal governments: They really have no status at all, other than the fact that they come under provincial jurisdiction. Although we can't change the Constitution here, because this is not the right forum for it, I think we truly have the next best thing here in this bill, which will allow the city of Toronto, its elected officials and its dedicated and hard-working staff to function at the absolute best level possible for the people of Toronto.

Just as a brief overview, the aim of Bill 53 is to:

- provide the city of Toronto with broad permissive powers;

- increase integrity and accountability. An awful lot of that is already present there, I must say, through various actions that the city has taken, but this gives it the legislative authority that will ensure that it will continue that way in the future;

- enhance governance and delegation powers, which are absent in the current situation; and

- provide greater flexibility in land use planning.

As our Premier has said about this bill, "As one of the world's great cities, Toronto will now have the autonomy to be as dynamic ... as competitive ... and as successful as the people who have chosen to make their homes, and their living, here."

We as a government realize that Toronto faces stiff competition from cities around the globe and are taking steps to help the city compete effectively. We introduced this legislation in order to provide Toronto, the engine of Ontario's economy, with the tools it needs to prosper in a competitive global economy.

"Toronto is a 21st-century city governed by 19th-century laws. It's long past time that we had a modern set of rules." That was stated by Glen Grunwald, the president and CEO of the Toronto Board of Trade when Bill 53 was first introduced last December.

Our government believes that this is the time to recognize the mature status of the city. As the Premier stated, "The city of Toronto grew up a long time ago. It is time for the law to catch up."

Bill 53 will bring about a reshaping of the relationship between the province and the city of Toronto, and it will make the city more fiscally sustainable, autonomous and accountable. In order for you to better appreciate the full scope and intent of this legislation, I would like to provide some context.

Since September 2004, our government has been working hand in hand with the city to help Toronto leap into the 21st century. Such dynamic co-operation is unprecedented and demonstrates our government's commitment to ongoing and reciprocal consultation with the city. We recognize that it's in the best interests of the province and the city of Toronto and, indeed, of all Ontarians outside of the city of Toronto to consult with each other on matters of mutual interest. We intend to establish a process for the provincial government to consult the city and its elected representatives, and the legislation also would obligate the city to similarly consult with the province on issues that it is interested in that affect provincial interests.

Bill 53, as I mentioned before, is the product of a joint effort, with the city and provincial governments working in partnership. Our goal was to create a framework of broad and enabling powers for the city of Toronto which, amongst others:

- gives the city broad permissive powers, subject to provincial involvement in areas of significance and of interest to the province;

- recognizes that, in order for the city to provide good government, the city must be appropriately empowered; and

- fosters a strong consultative relationship between the province and the city that respects and advances the interests of both governments.

A joint provincial/city of Toronto task force worked together for more than a year to develop a series of recommendations for a new legislative framework for the city. This joint task force recommended a bold new approach, proposing changes in a number of areas, including governance, finance and planning.

A key part of the joint task force work was consultation. As you all know, there's no shortage of views and suggestions on how the province should change the way Toronto is governed and how the city should govern itself. Stakeholder and public participation was a monumental aspect of how this legislation evolved. Brad Duguid, my parliamentary assistant, and I have had many meetings with stakeholders to discuss Toronto's future, and some of these same groups will be appearing before your committee in the coming weeks.

Also, in order to hear citizens' views and to gather the best possible input, the work of the joint task force was complemented by a unique, jointly conducted public consultation process last June. I believe it was the first time that the province and the city had worked together in a joint consultation of the nature and scope that that provided at that time. Online consultations provided further input for the public to provide us with extremely valuable input, and the views and recommendations of concerned citizens from all walks of life, quite frankly, were instrumental to the development of this bill.

I would first of all like to outline for you some of the new powers that this legislation proposes for the city of Toronto.

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We recognize that Toronto is a responsible, accountable, mature government, and Bill 53 proposes freedoms that would be considered significant to any Canadian municipality. We began from the principle that the city exists for the purpose of providing good government with respect to matters within its jurisdiction. We believe that city council is a democratically elected government that is responsible and accountable.

The aim of Bill 53 is to create a framework of broad powers for the city that balances the interests of the province and the city and recognizes that, to provide good government, Toronto must be able to do the following things:

- determine what's in the public interest for the city;
- respond to the needs of the city;



- determine the appropriate structure for governing Toronto;
- ensure that the city is accountable to the public and that the process for making decisions is transparent;
- determine the appropriate mechanisms for delivering municipal services in Toronto;
- determine the appropriate levels of municipal spending and municipal taxation for the city; and
- use fiscal tools to support the activities of the city.

The bill allows the city to pass bylaws regarding matters ranging from public safety to the city's economic, social and environmental well-being. These future bylaws could also deal with the financial management of the city and the accountability and transparency of its operations.

These broad permissive powers would permit the city to promote and support things that it wants to see happen and regulate or prohibit those that it simply does not.

These new powers should be interpreted broadly. The city needs broad authority to enable it to govern its affairs as it considers appropriate, and we need to enhance the city's ability to respond to municipal issues.

Currently, the city is limited in its powers to determine even the composition of its council and the ward boundaries, which I believe applies to no other municipality in this province. Under the proposed legislation, Toronto would have the same powers as other municipalities to establish the council composition and ward boundaries that would work best. This would let the city be more responsive to changing demographics and its own governance needs. If this legislation passes, Toronto will gain enhanced powers, such as the ability to determine its own governance structure.

Currently, Toronto city council is limited in the decision-making it can delegate to committees and boards. Under this bill, it would have greater ability to delegate powers and responsibilities, and this would give the city the flexibility it needs to better manage its deliberations and to streamline decision-making.

In its report released last fall, the Governing Toronto Advisory Panel stated the following:

"City council should spend its time on what is truly important. At present, city council often spends more time debating items that affect only one or a handful of wards, or issues not nearly as significant as the files it must soon address." Those were the comments from the Governing Toronto Advisory Panel.

This bill, if it passes, will give the city broader powers to license and regulate businesses. It will also provide the city with more flexibility to raise revenue in addition to property tax. If passed, it will provide broad permissive authority to impose new taxes except in the areas specifically prohibited therein, such as income tax, gas tax or wealth tax.

Bill 53 will provide increased flexibility to establish municipal corporations. The legislation also will provide broader authority to undertake economic development opportunities to make the city more competitive and prosperous.

Right now, the province sets bar hours and regulates the hours that Toronto businesses can remain open on certain holidays. This does not make a lot of sense. This bill, if passed, will give Toronto the flexibility it needs to extend bar hours to meet local needs, and to regulate store closings to reflect the preferences of a diverse multicultural society.

The city will have more power to control its own destiny with the passage and enactment of this bill.

**Increased accountability:** The bill will provide for a strengthened accountability framework for the city of Toronto. It will require the city to establish a lobbyist registry, integrity commissioner, ombudsman and auditor general. Some of this it is already doing, but this would make it a legislative responsibility and obligation. We believe that this would improve accountability and transparency.

The Governing Toronto Advisory Panel report commented on the need for strategic leadership. It stated, "Toronto needs a government that deliberates and acts strategically—at a city-wide level, with a long-term perspective, and through a coordinated policy approach.... We feel strongly that the mayor should be given the tools to provide strategic leadership for city council."

City council is expected to make a final decision on the Governing Toronto Advisory Panel's report's recommendations next month. Although Bill 53 makes provision for this province to act on the governance issue, we remain confident that such action will not be required and that the city will act on the recommendations of the panel rather than having the province act. As the Premier said on the day Bill 53 was introduced, "If they want to change how they provide important public services ... if they want to modernize the rules on municipal roadways ... if they want to recognize the unique character of a neighbourhood, they will have the power and autonomy to do so."

**Land use planning:** I'd like to provide some perspective on land use planning. Bill 53 is fully complemented by another proposed piece of legislation, namely Bill 51, the Planning and Conservation Land Statute Law Amendment Act. This legislation supports our government's priorities of managing growth, reducing urban sprawl, promoting intensification and preserving green space in Toronto, across the GTA and indeed across Ontario.

Our government's proposed planning reforms would shift decision-making to the front end of the planning process and be more focused at the municipal level. Our proposed reforms would ensure that the Ontario Municipal Board hears appeals based generally on information and material provided to municipal councils and the public, and truly become an appeal body.

Municipalities will also be able, upon meeting certain prescribed conditions, to set up a local appeal body to deal with local issues such as minor variances and consent matters in which the provincial interest is not involved. Municipalities will have new powers to regulate



exterior building design to influence how buildings and communities look and feel.

When approving zoning applications, they would be able to impose conditions to address development challenges—for instance, ensuring brownfields cleanup or energy efficiencies. There would be greater public input into planning decisions earlier in the process, and participation during the process would be required in order to have the right of appeal.

**The Chair:** Minister, you have about 30 seconds.

**Hon. Mr. Gerretsen:** Thirty seconds? Then I'd better go to the conclusion right away. I was going to talk about some of the other initiatives as well. Suffice it to say, I've got all sorts of quotes here from the Toronto Star, the Toronto Board of Trade, David Pecault, John Cartwright—my gosh, who wrote these notes, anyway? They're much longer than 15 minutes.

Let me just say that this has been an exciting process. I look forward to the deliberations that this committee will be involved in. I wish you well in your deliberations and hope that the bill that will come out of this committee will only strengthen what we regard as an already very strong bill for the city of Toronto and for the people of Ontario.

**The Chair:** Thank you very much, Minister. I didn't want to cut you off; I could tell you were very excited by the legislation.

**Hon. Mr. Gerretsen:** Oh, I have five seconds left?

**The Chair:** No, you've exhausted your time.

We've agreed in subcommittee that all three parties would be allotted five minutes to ask questions, beginning with Mr. Hardeman. Perhaps you'll be able to embellish some of those answers with some of the quotes that you have.

**Mr. Hardeman:** Thank you very much, Minister, for the presentation. I find it interesting that as I went through the bill, I didn't find enough that would make an interesting 15-minute speech about the things which are different from the present City of Toronto Act and the present Municipal Act. I just want to zero in on that: the issue of what there is in the new City of Toronto Act that gives powers to Toronto that do not presently exist in the Municipal Act for all municipalities.

Going on with that, I would also like to hear what you believe the difference is between Toronto as a governance and all other municipalities that would require a separate act to give Toronto the ability to set bar hours, while the city of Mississauga doesn't get to set bar hours because it's not a mature level of government—I had to take that from your presentation. What is there that makes this different, other than the three taxing areas, from an updated Municipal Act that would cover municipalities? Would that not have done the same thing?

1620

**Hon. Mr. Gerretsen:** Let me assure you that I certainly think that the cities of Mississauga, Brampton and many other communities in this province are mature levels of government as well, in the same way that the city of Toronto is.

In its most basic form, this bill, which goes for some 300 pages, encompasses the 300 bills that affect the city of Toronto in one way or another. That's just in its purest form. But this does much more than that. The city of Toronto right now is hampered in its governance situation much more than any other municipalities. It can't change the ward boundaries, it can't delegate many authorities that other municipalities have, and I could just go on and on. That's as a result of an act that your government passed six or seven years ago. Okay? You limited the ability of the city of Toronto to a much greater extent than other municipalities.

The other point, and both you and I are not from Toronto and I totally appreciate that: I think the people outside of Toronto really feel that if Ontario is to succeed and your community and my community are to succeed, it is absolutely essential that Toronto succeeds. It's the engine of this province. There are so many other areas that we deal with. It could very well be that this new City of Toronto Act could almost be a model for the rest of the municipal world.

**Mr. Hardeman:** I guess, Minister, that's really my question. I'm not suggesting that I'm opposed to the City of Toronto Act or the need for a City of Toronto Act. What I'm suggesting is, could this not be the framework for the reform to the Municipal Act that your government has been talking about for some time, that actually, instead of doing all the work for one area of the province, these things could have been done for the province in general?

**Hon. Mr. Gerretsen:** We felt there was a need to deal with the city of Toronto first because it was hampered and restricted more than any other municipality. Have we used this act to sort of do our current review of the Municipal Act? To a large extent, yes; not to every extent, but to a large extent. We always realized there are some smaller municipalities that will always need the assistance and help of the provincial government because they simply do not have the expertise from within etc. We certainly felt that this was the way to go with the city of Toronto first of all.

You know, I could be talking about governance. I could be talking about broad, permissive powers. The current Municipal Act talks about spheres of powers. We've gone much further than that. We've gone into areas where right now provincial approvals are required from probably about 15 different ministries, where we basically asked a simple question: In a lot of those approval processes, what is the provincial interest? If there is no provincial interest, the province shouldn't be involved.

I basically work on the theory that the people who are elected at the local level, whether they're in Toronto or elsewhere in this province, are just as accountable, just as legitimate, just as dumb and just as smart as the people sitting around here at Queen's Park or federally. That is the basic premise we work on. I could go on and on as to what is included in this act that perhaps you haven't had an opportunity to research to the same extent, but I can assure you that this will give the city of Toronto much



greater authority to deal in a whole bunch of areas where it simply cannot do so now, including of course the new fiscal tools that we've provided for the city of Toronto.

**The Chair:** Thank you, Minister. Mr. Tabuns?

**Mr. Peter Tabuns (Toronto-Danforth):** Thank you, Minister, for coming here today and making the presentation. I'm concerned that recent actions of your government are contrary to the spirit of the legislation that's before us. I speak particularly about the Portlands Energy Centre. As you're well aware, the mayor and members of the council have made very clear the way they want the province to deal with energy needs for the city of Toronto. Their interests and their analysis have been set aside, and I don't think that bodes well for this bill, notwithstanding the fact that there are things in here that are very useful. I'm speaking as a former member of Toronto city council.

Having said that, one concern I have is that Bill 51, coming forward, gives the province the power to override municipal zoning when it comes to energy facilities. So if you decide that you want to put a power plant somewhere in a municipality, under that bill you will have the ability to simply plunk it down. How does that sit with Bill 53, with your intention to give the city of Toronto more autonomy? Will the city of Toronto have its zoning respected, or will you use Bill 51 to override the zoning of the city of Toronto and essentially set aside Bill 53?

**Hon. Mr. Gerretsen:** You are correct that in Bill 51, the way it's being debated in the House right now, there's a clause that says energy projects are exempted from the planning process, or planned to be exempt from the planning process. As far as the energy aspect of it, I'll leave that to the Minister of Energy to discuss.

We quite simply felt it's important to keep the lights on in this province. That's paramount. We saw the destructive aspect it had in August 2003, when the lights went off. So that's number one. Number two, we feel that there is an environmental assessment process that will deal with many of the same issues that are included in the Planning Act. Quite frankly, we felt to a certain extent there was duplication of services. We're also saying at the same time—and this has also been raised, for example, by the mayor of Mississauga at some meetings we've had with her—that a protocol has to be put in place as to how these electricity and energy issues are going to be dealt with.

I'm not suggesting for a moment that there aren't going to be times when the provincial interest and a municipal interest, whether it's Toronto or elsewhere, may be in some sort of conflict. That may happen. Perhaps this isn't going to deal with all the problems in the world, but it's going to deal with an awful lot that shouldn't be there right now. I'll just leave it at that.

**Mr. Tabuns:** Okay. If I still have time, I first of all want to say that I have no doubt whatsoever that our friends from the city of Toronto want to keep the lights on as well. I would say, frankly, that they approached the whole question quite responsibly at every step, looking to make sure that any changes they proposed would still

ensure that the lights would be on and people in the city of Toronto would have power. That being said, they put forward a very practical approach that was not accepted by your government.

One of the things that you've just told us is in this legislation is the ability of the city to determine conditions for environmental well-being. You talked about efficiency standards. Can you tell us right now that this legislation will allow the city of Toronto to set building code standards so that the efficiency of buildings that are built in this city meets a standard that will allow, for instance, a reduction in demand for power, thus keeping the lights on?

**Hon. Mr. Gerretsen:** All provincial acts will continue to apply, including the building code. I can tell you that right now we're looking at the building code from an energy efficiency viewpoint. If you could just give me a moment—I've got nothing further to add to that.

**Mr. Tabuns:** Okay. If I understand what you're saying, notwithstanding your presentation, the city of Toronto couldn't set a standard for efficiency higher than the building code, thus allowing it to address its energy crunch.

**The Chair:** You have about 30 seconds to answer that.

**Hon. Mr. Gerretsen:** I would have to get back to you on that.

**Mr. Tabuns:** I'd appreciate that.

**Hon. Mr. Gerretsen:** Okay. I'll get back to you on that.

**Mr. Tabuns:** You've said there are certain taxes that would be allowed and certain that would not be allowed. Would you allow the city to tax energy consumption outside of gasoline, which is the one energy source you cited in your comments?

**Hon. Mr. Gerretsen:** There are three main areas that are not included in Bill 53. That's income tax, sales tax and gas tax.

**The Chair:** Thank you, Minister. From the government side, are there any questions?

**Mr. Duguid:** Madam Chair, if we skip ahead to the deputants, we'll forgo our questions. Otherwise, we'll take our time.

**The Chair:** I think we can go ahead and go to our deputants. We thank Minister Gerretsen for being here. We appreciate you sparing the time to speak to us.

**Hon. Mr. Gerretsen:** Thank you very much, and good luck in your deliberations.

## CITY OF TORONTO

**The Chair:** I'd like to welcome our witnesses and tell all of them that they will have 15 minutes to make their presentation. When you come forward, if you could state your name and your title for the purposes of Hansard. Our first deputation today is Mayor Miller.

**Mr. David Miller:** Thank you very much, Madam Chair, members of committee. We appreciate very much the opportunity to be here today. On my left is Shirley



Hoy, the city manager of the city of Toronto; on my right is Phillip Abrahams from the city manager's office. I would just like to alert members that I am going to give a concise version of my remarks so there is an opportunity for questions, in view of the time.

It's a pleasure and a privilege to appear before the standing committee this afternoon to review Bill 53. This bill marks an historic milestone in the life of Canada's largest city and for all Ontarians, an achievement of which we can be proud.

1630

I'd like to acknowledge the leadership of Premier Dalton McGuinty, Municipal Affairs Minister John Gerretsen and our former colleague, MPP Brad Duguid, and thank them for recognizing Toronto's need for a modernized legislative framework.

Much has changed since 1834, when Toronto became a city. Then, the population and economy were rural, trade was local and growth was on untouched land. Today, Toronto has over 2.6 million people and is the heart of a dynamic economic region of 5.5 million people and growing.

Clearly, a one-size-fits-all, highly prescriptive legislative framework is totally inappropriate for a city of Toronto's modern size and responsibilities. We need a modern framework that provides Toronto and its government with the autonomy, authority and accountability to provide good government and high-quality services.

I'm pleased with the bill's explicit recognition of Toronto as Canada's economic engine, with a mature order of government capable of exercising its powers in a responsible and accountable fashion.

Toronto's new ability to directly enter into agreements with other governments sets the stage for the long-term, multi-faceted package of reforms needed to resolve the city's systemic fiscal imbalance.

Provisions for ongoing consultations with the province under agreements will ensure Toronto's place at the table on matters of mutual interest.

Empowering council with broad and permissive powers to provide good government and determine the city's best interests represents a truly historic departure. These measures will facilitate creative problem-solving, support stronger intergovernmental relations and change the way Torontonians think about their city government.

In keeping with the broad and permissive power framework, there is now clear authority for council to provide any service necessary for the public and to effectively legislate for the well-being of its people. This means not having to again fight all the way to the Supreme Court for city initiatives like the pesticide bylaw that is protecting the health of our children and the environment.

The bill also provides the city with the general authority to levy taxes, subject to certain limits. In following the debate on the bill, I know some have raised concerns. To be clear, these new revenue powers alone will not resolve the city's long-term structural fiscal imbalance, which can only be addressed through discussions and

initiatives with the provincial and federal governments. Council will continue to undertake a strong consultation model in deciding whether and to what extent any new revenue powers are needed to help our city thrive.

Along with the planning reforms under Bill 51, we also look forward to new powers to better shape our urban environment. These include more controls on the demolition of residential rental properties, promoting green roofs to reduce energy consumption and faster approval for community improvement plans and brownfield remediation.

Just to help our colleagues who were out of the room, I'm reading from a shortened version in the interests of time.

We're also pleased that the bill restores the city's powers to determine its own governance structure. It gives Toronto back some of the most basic powers, like drawing its own ward boundaries. More importantly, the legislation will equip us with the necessary powers to delegate truly local matters appropriately, allowing city council to focus on city-wide leadership.

Accountability continues to be an important part of city government. The city looks forward to putting in place new accountability measures which it asked the province to include in Bill 53 and which are needed to respond to the Bellamy inquiry.

As good as the bill is, though, there is some room for improvement. Our written submission goes into more detail on our proposed amendments, but I'd like to highlight a few.

With respect to the city's autonomy, there are well-understood provisions in the bill that ensure city bylaws will not be in conflict with provincial or federal laws. However, the bill goes further and prohibits bylaws that might be deemed to "frustrate the purpose" of such legislation in subsection 11(2). This introduces, in our view, an unnecessarily wide degree of uncertainty and potentially unhelpful interpretation by the courts. The city requests striking out subsection 11(2) and adding a provision that deems city bylaws on local matters not to be in conflict with provincial statutes or regulations.

Similarly, the city strongly urges striking out section 25, which allows cabinet to limit by regulation the city's general powers under sections 7 and 8 and its general power to tax under section 262. These regulatory powers would be new and very broad, and inconsistent with the intent of Bill 53 to empower the city.

Also inconsistent with the bill's empowering approach are the numerous limits that might be imposed through regulation. Council should be allowed to establish by bylaw the policies needed to manage affairs within its own jurisdiction.

Property tax is the principal source of revenue for city services. Council has recently approved a long-term plan that responsibly begins to address historic disparities among various property tax classes. Moreover, the city needs the ability to create or modify tax classes, like creating a small-retail class to stimulate job creation. As a mature order of government, the city needs full control



over its property tax base and access to broader revenue sources, such as income and sales taxes that grow with the economy.

The city needs the authority to create a local appeal process for all planning matters, not just minor variances, to properly protect neighbourhoods and stimulate appropriate city building. We also need inclusionary zoning authority to ensure that affordable housing is available for our most vulnerable residents.

To build on environmental commitments, the city needs its own environmental assessment process for projects that have only urban local impacts and where the city is the proponent.

Finally, the bill appropriately imposes an accountability regime on the city to complement more authority and autonomy. However, it does fall short in providing a full statutory framework that allows us to follow the blueprint laid out by Justice Denise Bellamy, such as control over lobbying and further empowering our integrity commissioner.

I have highlighted in my remarks how Bill 53 is a historic step for the city, the province of Ontario and Canada, and how it will make a strong Toronto an even more dynamic place to work and live. However, we need to recognize that important changes inevitably raise concerns, particularly when at this stage we can't definitively say how council will use its new powers.

Toronto's government is the most open, consultative and responsive order of government, with a very proud tradition of transparency and accountability. The city will continue to use its careful policy development process to prepare for these new authorities and ensure that new authorities are used wisely.

The bill also enshrines our new relationship with the province based on mutual respect. I have invited Minister Gerretsen to begin work so that a memorandum of understanding on ongoing consultations is in place even before the bill comes into force. I would also request that the new act be in force in time for the new term of council, i.e., December 1, 2006.

With this bill, together with the amendments we have proposed and our ongoing consultations, the province will have truly put Toronto in a position to succeed and to realize its tremendous potential as a world city.

Thank you, and I look forward to your questions.

**The Chair:** Thank you. You have left about two minutes for each party to ask questions, beginning with Mr. Tabuns.

**Mr. Tabuns:** Mayor Miller, could you speak very briefly to the idea of a city of Toronto environmental assessment act: where you would see it as appropriate in situations where the province's legislation wouldn't be and vice versa?

**Mr. Miller:** Sure. First of all, I have to say that the comments I made are on behalf of council—it's council's official position. I'm here in that capacity. We think the act as a whole is superb. The improvements we have suggested are just to make it even more superb.

I see an opportunity in environmental assessment issues; for example, in public transit. By definition, new public transit is good for the environment, yet the city of Toronto spends millions and millions of dollars each and every year on environmental assessments for public transit; for example, in the port lands. If we are able to have authority to undertake our own public consultation process to meet similar goals, we would be able to do that more efficiently, cut red tape and also protect the environment. It's on those kinds of issues that we're interested in having greater latitude.

**Mr. Tabuns:** I understand, as well, that you will have some authority in this act to provide financial incentives for energy efficiency.

**Mr. Miller:** Yes, that's my understanding.

**Mr. Tabuns:** How helpful will that be to the city, given the financial situation of the city?

**Mr. Miller:** I think what's important about the act is that it empowers the city to be creative in its public policy response on a whole range of issues, as the provincial government can do. We should think of the city that way, because we are larger by budget and by population than most provincial governments in Canada, except those of Ontario, Quebec, BC and Alberta. What the act does is allow us to respond creatively. Obviously, our ability to offer financial incentives just constrains our structural fiscal imbalance, but the act would give us the ability on issues like energy to be much more creative in the way we approach it. Given the partnership that the act creates with the province, we're able to work together and address issues in a way that addresses the provincial interest and the city interest. So I hope, for example, the co-operation we're able to see here will allow us to resolve issues where we aren't yet in agreement, like new power plants. That's really what is underlying this legislation: creating a partnership between the city and the province. I think it's the first time that has been expressed in legislation of this kind, recognizing that we have overlapping responsibilities and should work together. I think that's very positive.

1640

**The Chair:** Thank you, Mayor Miller. Mr. Duguid.

**Mr. Duguid:** I noticed in your comments, Mayor Miller, you mentioned that much has changed since 1834. I'd suggest that's true. Much has changed in the last two and half years as well, if you look at the relationship between the city of Toronto and the province. In fact, I'm not sure the people of Toronto yet recognize the significance of that change, if you just take a look at the past two and a half years: if you look at public health uploads, if you look at partnerships in policing to work with Toronto in dealing with some of the issues that have come out the last couple of years, if you look at land ambulance costs, if you look at the incredible change in public transit investment in this city.

I want to start off by thanking you for being here today and thanking you for the role you've played in changing that relationship, because it really has benefited, I think, each and every resident of Toronto, the fact



that the province and the city are now working together for the betterment of our city. I think this bill is certainly a shining example of what can come out of a relationship when both parties are working together.

There have been some concerns raised—you touched on it in your speech, and I'll give you a chance to comment quickly on it further—about licensing provisions and alternative sources of revenue by some who would suggest that the city may at some point in time abuse those powers. We have confidence in the city that they will not do that and we have confidence in the people of Toronto that they would ensure that their council will use these tools appropriately, but I'm wondering if you can bring further comfort today.

**Mr. Miller:** Yes. We have no current plans to invoke any of those powers. It is appropriate to give the city the general powers. It's an issue of principle: Do we respect Toronto's responsibilities and the magnitude of them by giving Toronto these kinds of general powers, which does make it different than any other municipality in this country? We house more people in our public housing than live in Prince Edward Island. That's why we need the broad powers, so that we can have proper public policy responses with all the tools available; otherwise, you can't have the proper public policy response. But it would be our intent, if there are any public policy changes, to go through the appropriate consultation process. In fact, what the bill does, through the delegation provisions, is empower us to allow council to deal with high-level issues and committees to deal with the implementation, which will allow us to do our public consultation in our traditional open manner but with even more rigour.

I think the bill creates the conditions where the people of Toronto, of course, are going to elect people to do their bidding and will be even more likely to do their bidding than in the past.

**The Chair:** Thank you, Mr. Hardeman?

**Mr. Hardeman:** Your Worship, thank you for the presentation. One of the issues that you mentioned was the appeal process as relates to the consent and minor variances that's in Bill 51 and that it would be more appropriate to have that expanded so you'd have more local appeal ability. I wonder if you could help me on that one as to what that would be. Would that be a form of municipal board structure that the city would set up, or in fact can we redesign the municipal board in such a way that it would be sufficient for all of them to be dealt with that way? Appeals are in appeals, and I'm a little concerned as to what difference it makes which level of government actually sets up the board to hear the appeal.

**Mr. Miller:** I have to make sure I'm giving the city of Toronto position, which is my job here today, and not my personal opinion. I'm happy to give you my personal opinion, Mr. Hardeman, but perhaps we could do that—

**Mr. Hardeman:** Oh, okay. That's just as good.

**Mr. Miller:** The city's position—there is a paper that's publicly available, and we can get it to your office if you wish—on planning issues is very well thought out.

I think the gist of it is that the city should be the planning authority, and the Ontario Municipal Board's role, at a maximum, should be as a true appellate body, not to hear cases de novo. We see a broadened role for a city of the nature of Toronto, given the size and complexity of our government, the population and the budget size and so forth, in dealing with planning matters in a more final way.

I think that's very important for a fundamental reason: When you have the OMB, it's all too easy for residents and developers just to say, "We're not going to compromise. We're just going to take our position." The planning process, at its best, should bring them together and find a way to ensure that development happens—and our official plan is very supportive of development—but happens in a way in which neighbours truly have a say. It's the city council position, as expressed in this paper, that at the moment that's not the case. I have to say, personally, I'm quite encouraged by the progress of the related reforms, but I don't think council has a final position on the related reforms yet. I think that's still before council.

**The Chair:** Thank you, Mayor Miller. We've exhausted our time with you. We appreciate you being here.

**Mr. Miller:** Thank you very much. Thank you for your attention, and I'm sorry to exhaust you.

**The Chair:** We appreciate you being here.

#### TORONTO REAL ESTATE BOARD

**The Chair:** Our next delegation is the Toronto Real Estate Board, Ms. Mason. Welcome. We're not going to start until we've got kind of a furor at the back quieted down. When you do begin, you will have 15 minutes. If you could identify yourself and anybody else who may be speaking this afternoon for Hansard, that would be helpful. Should you use all of the time, there won't be an opportunity for us to ask questions, but if you leave a little bit of time, there will be an opportunity for the parties to ask questions. Welcome.

**Mrs. Dorothy Mason:** Good afternoon. My name is Dorothy Mason. I am the president-elect of the Toronto Real Estate Board, or TREB for short. Joining me today are Von Palmer, TREB's director of government relations, on my right; Mauro Ritacca, TREB's manager of government relations, on my left; and Gerry Weir, chair of the Ontario Real Estate Association's government relations committee.

On behalf of TREB members, I would like to thank you for allowing us the opportunity to present our views on Bill 53. As some of you may know, TREB is an association of over 23,000 realtors working in the residential, commercial and industrial markets in the GTA. Every day, realtors help bring people, businesses and jobs to this region. Last year, TREB members facilitated more than 84,000 residential sales and 12 million square feet of industrial-commercial transactions.

TREB members understand that their success depends on the success of the city of Toronto and the GTA. That



is why TREB is working closely with governments at all levels to solve the challenges facing this region. We applaud the provincial government for the initiative that it has shown in this respect. Specifically, the provincial government's leadership to ensure the viability of public transit and infrastructure is extremely encouraging.

We also applaud the provincial government for recognizing that the city of Toronto plays a unique role in Ontario and the GTA. Ensuring the continued success of this province means ensuring the success of the economic engine, Toronto. To do this, a new deal between the city of Toronto and the province is needed. TREB believes that Bill 53 is the first step in this direction, which is why it is important that we get it right. Unfortunately, in its current form, Bill 53 could have unintended consequences that will in fact hurt Toronto's competitiveness instead of improving it.

TREB's key concern regards section 262, which gives the city of Toronto broad authority to levy taxes, subject to certain limitations. Although section 262 closes the door for various types of taxes, it leaves the door open for a local land transfer tax to be imposed on top of the provincial land transfer tax already charged to purchasers of property. TREB fully understands the city's need for flexibility in raising revenues. Every day, TREB members see the effects of high property taxes on real estate markets. It is simply unrealistic to expect property taxpayers to provide the level of investment needed to address the city's challenges. However, the answer is not a local land transfer tax, which would simply be another tax on property owners.

1650

A Toronto land transfer tax could create more problems than it would solve, not only for the city of Toronto but also for the GTA and the province. The direct impacts of a Toronto land transfer tax would be clear: Toronto housing would be less affordable, and attracting businesses to Toronto would be more difficult. The unfortunate results would be more urban sprawl and less economic growth.

If home buyers and businesses are forced to pay an extra tax to purchase a property in Toronto, the result will be obvious: They will choose to live or do business where they won't have to pay this tax: outside of Toronto. Make no mistake, the average homebuyer will perceive a Toronto land transfer tax as nothing more than a homebuying tax that they could avoid by choosing to live outside of Toronto. The average Toronto home seller would see this as a tax that does nothing but make their property more difficult to sell.

Similarly, for businesses looking to locate within the GTA, a new Toronto land transfer tax would make Toronto even less competitive. Toronto's high business property taxes already discourage businesses from locating here. A new Toronto land transfer tax will make this situation even worse.

By making it more difficult to live and work in Toronto, relative to the 905 region, the obvious result will be more urban sprawl, more traffic congestion and a

worse quality of life. This would be completely contrary to the objective of the provincial government's greater Golden Horseshoe growth plan, which specifically attempts to contain urban sprawl by intensifying growth in designated priority growth centres, many of which are located in Toronto. This raises one simple question: How can the province intensify population and employment growth in Toronto by allowing new taxes that will make it more expensive to live and work here?

A Toronto land transfer tax would also have a direct impact on the local and provincial economy. According to research conducted by Clayton Research for the Canadian Real Estate Association, the average resale housing transaction in Ontario generates over \$27,000 in spinoff economic activity for things like renovations or the purchase of furniture and appliances. This means that housing transactions facilitated by TREB members contributed close to \$1 billion to the Toronto economy last year alone. This represents a significant number of jobs that would be directly threatened by a Toronto land transfer tax.

More urban sprawl and less economic growth is a high price to pay for a new tax, so it is important to consider if its benefits will outweigh these costs. We believe the answer is no. By making Toronto real estate less affordable and therefore reducing associated economic activity, a Toronto land transfer tax would result in less property assessment growth for the city over the long term. This could very well mean that any new revenue from a Toronto land transfer tax would be offset by forgone revenue from less assessment growth.

A Toronto land transfer tax also raises questions of fairness. As I've already mentioned, a land transfer tax is already imposed by the provincial government. On the average Toronto home, the provincial land transfer tax is close to \$4,000, payable in full by the homebuyer when they purchase a property. This substantial cost is intended to pay for provincial services associated with property transactions. It is not clear what, if any, municipal services related to property transactions a local land transfer tax would be paying for.

As mentioned, TREB fully understands the challenges faced by the city, and we believe that Bill 53 is part of the solution, but it is not the whole solution. To truly address the city's challenges over the long term, structural issues must be addressed. First and foremost, the city must ensure that it is delivering services as efficiently as possible. Taxpayers expect this and they deserve no less. Secondly, and just as importantly, the provincial government must deliver on its commitments to ensure that provincial social services are funded provincially. According to the Association of Municipalities of Ontario, Ontario is the only province in Canada where municipal property taxes are used to subsidize provincial health and social service programs. We applaud the provincial government for its recent actions to address this issue and we look forward to additional progress.

Toronto is a world-class city and it deserves to be treated with respect. Bill 53 is a significant achievement



in this regard. It will give the city the new deal it needs with the provincial government, but it should go further: It should also give Torontonians a new deal with their city government, a deal that assures them of efficient, high-quality services, and not new taxes.

Thank you for giving us this opportunity. I hope you have found our views helpful, and our team would be happy to answer any questions should there be some.

**The Chair:** Thank you. You've left about two minutes.

**Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell):** Thank you very much for your well-structured presentation. I have a question. You referred to the land transfer tax. At the present time, before you conclude a transaction, you have to get down to the city and pay a tax certificate when you get the information from the city. Is there a fee applicable for a tax certificate?

**Mrs. Mason:** Sorry, what information do you refer to that you get from the city?

**Mr. Lalonde:** Before you conclude the transaction, you have to find out through the municipality if all the taxes have been paid. There's some research to do. Most of the time the municipality would charge you a fee. That's what they call a search and that's what they call a tax certificate.

**Mrs. Mason:** The title search and that type of thing?

**Mr. Lalonde:** That's right, yes. Is there a fee applicable at the present time?

**Mrs. Mason:** Yes, there is.

**Mr. Lalonde:** Chair, that is my question.

**The Chair:** Any further questions?

**Mr. Duguid:** I just want to thank you for being here today and for your presentation. I've had an opportunity over the last couple of years to spend a fair bit of time with your board and I really appreciate the input you've had on this and other pieces of legislation. I don't think I have any more time than that, so I thank you for being here. We'll continue to work with you.

**Mr. Hardeman:** Thank you very much for your presentation. As I was looking at section 262—I find it interesting to hear about the land transfer tax—it's quite extensive in what is allowed, but it's actually much more extensive as to what is not allowed to be taxed. When the bill was written, I'm sure they decided, "We wanted to make it broad and then we wanted to make sure we closed it to where we don't want them to go." Could you suggest or tell me why you believe that one was not included as a tax they're not allowed to charge? If you look at some of the other ones, it's areas where it's not a cost that they're covering. I think Mr. Lalonde mentioned the service that the city's providing—land transfer is not a municipal exercise, it's a provincial exercise, and if they put that on they would be taxing a provincial service. Why would they not exclude that in the bill, in your mind?

**Mrs. Mason:** I'm not sure if I have the answer, but we don't believe public policy should be structured by elimination. We believe there should be specific areas

that could be highlighted as to what would be approved, as taxes go, unless either—

**Mr. Hardeman:** But you would be satisfied now if we introduced an amendment and just added the land transfer tax to those exclusions of taxes?

**Mrs. Mason:** Yes, we would be very pleased with that.

**Mr. Hardeman:** It wouldn't change because we've heard the city say, and we've heard the minister say, that we have great faith the city will not charge taxes that will be detrimental to their future growth, as you suggested this might be. So it would be a reasonable amendment then to put that in so that we had land transfer tax excluded as a tax that was allowed to be charged?

**Mrs. Mason:** We believe that to be a very proper amendment to put in place.

**Mr. Tabuns:** Thank you very much for making the presentation. The first question I have: It's alluded to in here, but just to very clear, the Toronto Real Estate Board believes that the expenses that were downloaded onto the city of Toronto in the past should be reversed and reassumed by the province. Am I understanding you correctly?

1700

**Mrs. Mason:** Are you speaking about the provincial social services?

**Mr. Tabuns:** Yes.

**Mrs. Mason:** Yes, we do.

**Mr. Tabuns:** Good. Is anyone actually proposing a land transfer tax?

**Mr. Von Palmer:** The reason we've raised the issue—and that's a question we ask: Why is that not one of the exclusions in the bill? I believe that if you look at a speech Mayor Miller gave about a year ago—and it's posted on the city's website—he listed the land transfer tax as one option the city may look at. So when we read speeches such as those, it obviously raises concerns on our end. I think the gentleman appropriately raised the issue as to what we think about the land transfer tax not being excluded in this bill, and we ask the question, why is it not excluded? Obviously, if you open the door, you tempt fate and you allow the city to move in and impose a land transfer tax.

**Mr. Tabuns:** Did you want to ask a question?

**Mr. Peter Kormos (Niagara Centre):** You're doing oh so well.

**The Chair:** I don't think he has been properly subbed. Mr. Tabuns, you still have about a minute left if you wish to use it.

**Mr. Kormos:** But I could if I wanted to, right, Chair?

**The Chair:** I believe you can, yes.

**Mr. Kormos:** Go ahead, Mr. Tabuns.

**Mr. Tabuns:** In fact, most of my questions have been covered. Unless you had one that you wanted to bring forward, I'm fine for the moment.

**The Chair:** Thank you very much for being here. We appreciate your team appearing before us.

**Mrs. Mason:** Thank you for your time.



## ONTARIO RESTAURANT HOTEL AND MOTEL ASSOCIATION

**The Chair:** Our next delegation is the Ontario Restaurant Hotel and Motel Association, Mr. Mundell. Welcome. As you get yourself settled, if you need some water, please help yourself. You will have 15 minutes to speak. If you could identify yourself and the association that you speak for and anybody else who may be speaking today for the purposes of Hansard. After you've introduced yourself, you will have 15 minutes. Should you use all that time, there won't be an opportunity for questions, but if you leave time, there will be a chance for us to ask you about your deputation. We do have your handout before us.

**Mr. Terry Mundell:** Thank you very much, Madam Chair and members of the committee. Good afternoon. My name is Terry Mundell. With me today are my colleagues Syd Girling and Michelle Saunders. I'm the president and CEO of the Ontario Restaurant Hotel and Motel Association, the largest provincial hospitality industry association in Canada. I want to thank the committee for the opportunity to speak with you today, as Bill 53 is a significant bill for the hospitality industry. Our membership and our industry is comprised of both the accommodation sector and the food service sector, all of whom are impacted by this bill.

Over the past number of years, the hospitality industry has suffered from the effects of 9/11, SARS and the NHL lockout, to name but a few. All of these factors, from which the industry has not yet fully recovered, have been completely out of the control of the government and the industry. That's why it is so important that Bill 53 be used as a tool to help support a business community in Toronto that's dynamic, competitive and sustainable.

To that end, the ORHMA recognizes and supports that Bill 53 expressly prohibits the city from levying a hotel room tax. This ensures that funds generated through the voluntary, industry-led destination marketing fee will remain dedicated funds, to be used solely for destination marketing, a positive step for the industry.

However, the ORHMA does have a number of concerns with the different components of the proposed legislation, as outlined in our letter to the Premier. Our main focus is the proposal to grant the city of Toronto the authority to levy a direct retail sales tax on the purchase of liquor or, more simply, to add a fourth tax line to the customer's bill. This measure threatens the sustainability of the hospitality industry's licensee community. The ORHMA recommends that this committee amend the bill and remove this clause during clause-by-clause consideration.

When Bill 53 was introduced, the Premier stated that "Toronto would now have the ability to be as dynamic, as competitive and as successful as the people who have chosen to build their lives here." But the liquor tax provision of the bill contradicts the government's stated intentions. It will reduce sales, lower operating margins and jeopardize thousands of jobs in Toronto's licensee community.

Why does Bill 53 specifically target the licensee community, which is 63% independently owned and operated, with a direct tax? No other industry comprised of such a high proportion of small and independent businesses is targeted. Other proposed municipal powers such as user fees and licensing bylaws are applied across the board; everyone pays. But this provision of the bill targets the licensee community, a community which presently today is struggling to make ends meet.

Our industry, of which 17,000 of the 22,000 establishments have liquor licences, with 8,000 food service establishments in the city of Toronto alone, of which 4,100 are licensed, represents a quarter of all licensees and a third of the beverage alcohol market in Ontario. Provincial statistics therefore are reflective of the realities of the licensee community in Toronto. I want to give you a sense of what that reality is.

Statistics Canada data, not adjusted for inflation, shows Ontario's food service sector sales growth between 1998 and 2005 at only 3.5%, lagging behind the national average of 4.3%. This is more notable when Ontario's sales growth is compared with the rest of Canada, whose growth was 4.9%, which is figure 2 in your charts. Ontario's sales, which flatlined for four years, actually bring down the national average.

The two specific segments of our industry that will be impacted by an additional tax on liquor are full-service restaurants and the bar, tavern and nightclub sector. Figure 3 in the chart shows that for full-service restaurants, which generate 18.2% of their revenue from the sale of beverage alcohol, overall sales, at 3.5%, trail the rest of Canada, which is 4.6%.

Between 1998 and 2005, bars, taverns and nightclubs in Ontario saw virtually no sales growth. If you look at figure 4, annual sales growth for this sector is only 0.2%. The 2005 sales figures for this sector are below even 1999 sales figures. This segment of the industry, as you will see from figure 5, receives over 72% of its operating revenue from the sale of beverage alcohol. Adding a fourth tax line will simply destroy this segment of the industry.

Now let's talk about profitability. Again, as you'll note from figure 6, Ontario's total food service industry operating margins in 2004 were the lowest in the country, at 2.8%. Full service restaurants' operating margins are 1.9%, and bars, taverns and nightclubs had the lowest operating margins of any other industry segment in the country, at 0.9%. These numbers indicate that in the present form, with profits averaging between 1.9% and 0.9%, the industry, quite frankly, is not sustainable in Ontario and Toronto in its present shape.

Figures 10 and 11 indicate the impact a municipal sales tax on liquor may have on the profit margins of full-service restaurants and the bar, tavern and nightclub sectors. Not only will profits decline, but profits will become losses. Losses become closures, bankruptcies, and job and investment losses as well.

This is about the long-term sustainability of an industry that's holding on by a thread. Licensee pur-



chases used to represent 16% of all sales at the LCBO and in a short period of time have dropped to about 10.6%. The industry also faces altered tourism patterns as a result of the western hemisphere travel initiative. What is needed now is leadership, not a tax that will threaten the sustainability of the licensee community in Toronto, and in Ontario for that matter.

The revenue that will be generated by a municipal retail sales tax won't come close to solving the city's financial situation. The city's 2006 revenues are more than \$7.6 billion. It's estimated that a municipal liquor tax of 1% will generate approximately \$4.3 million, and 8% will provide the city with an additional \$34.8 million. This doesn't begin to address their concerns or their economic outlook, but it will close doors and eliminate jobs. The city's books cannot be balanced on the back of one industry, particularly this industry, this small business sector, which is 63% independently owned and operated. These operators in the city of Toronto already pay over \$200 million in fees, levies, mark-ups and provincial sales tax remitted on the resale of beverage alcohol, on top of property tax, business licensing fees and other user fees. Future new investment in this sector will be questionable at best.

This provision of the bill also raises issues of public safety, booze zones, drinking and driving, illegal liquor, smuggling, booze cans and the enforcement of the illegal element. LCBO's own statistics show that from 2003-04 to 2004-05, untaxed illegal liquor increased by 18% when mark-ups were increased by the provincial government. These will become an issue not just within Toronto but throughout the province.

This isn't about the city of Toronto or about any other municipality; this is about the sustainability of a small business sector. The fact of the matter is that municipalities in Ontario receive their authority from the provincial government. Bill 53, a provincial bill, is before you today for consideration, and now is the time to make an amendment. The city doesn't have a vote on this provision; you do. We are asking members of this committee and members of the government to do the right thing: to stand up and support the independent owners and operators who have dedicated their lives and have all their investments tied to this industry, who have everything to lose, nothing to gain, and who are looking for your leadership.

Once again, the ORHMA is asking this committee that during clause-by-clause consideration of Bill 53, section 262(2)5.ii, the provision to permit the city to levy a direct retail sales tax on liquor, be revoked.

Thank you for your time.

1710

**The Chair:** You've left about two minutes for each party to ask questions, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation on behalf of all your membership.

First of all, I want to say that we had previous presentations dealing with the land transfer tax. The mayor of the city of Toronto presented. Everyone seems to agree,

or at least the minister and the mayor agree—and this was more about the licensing side—that if they have the ability to tax but it will be negative to the industry or to their community of the city of Toronto, the city would not impose the taxes, even though they have the right to do that. In your opinion, would that hold true here? If this presentation was made to city council in Toronto, even though they have the ability to do the sin taxes, which we all know is the first place people go for taxes, does your industry have confidence that the mayor will come through and say, “Well, no, this will be negative to that part of our industry; we will not find the extra revenue there”?

**Mr. Mundell:** I think, to be abundantly clear, he's one mayor and one city councillor. Councils change. They revolve every three years—or four years, depending on amendments that may come forward.

This is an issue about industry sustainability. If the mayor and members of council believe they don't need this power, then don't give it to them. You have the decision-making authority now. The accountability lies here at Queen's Park for this piece of legislation. Stand up for those small, independent operators in our industry who are struggling now at 0.9% and 1.9% profit margins. We're not sustainable now. We can't take the chance.

**Mr. Hardeman:** I would just go on. Obviously, on behalf of your members, you've studied this bill quite carefully. Looking at that section of the bill that deals with the tax on alcohol, cigarettes and entertainment, if you took that section out, if you took those items out, there would no longer be a need for that whole section. The government has said they're going to give extra taxation powers to the city, but when you read that whole section, it's all exclusions except those four. So we realize that it's not an amendment to exclude four more; in fact, the suggestion is that we should not have the city taxing in areas where the province already taxes.

**Mr. Mundell:** That's the general consensus from us: The city should not be taxing where the province already does. Again, we have an industry where sales aren't back to 1999 figures. I don't think any industry is happy with that.

**Mr. Hardeman:** The other thing—

**The Chair:** Thank you, Mr. Hardeman. You've exhausted your time. Mr. Tabuns.

**Mr. Tabuns:** Thank you for the presentation. There is always going to be a question of how the city is going to balance its books. That's part of the reason there are those tax provisions in the law. Does your organization support a reversal of the downloading of social service expenses on to the city and a return of those costs to the province?

**Mr. Mundell:** I think there's a real question about what is on the property tax base now. I don't think there's any doubt about that. What the reversal is and what the correct mix is we don't have an opinion on, but clearly there need to be some changes on what's paid for out of the property tax in Ontario, not only Toronto.

**Mr. Tabuns:** Do you have comments on any other part of this bill?



**Mr. Mundell:** We've sent a letter to the Premier. There are a variety of other comments that we have around the bill, but clearly for us this is the major issue. This will drive our business down. Again, what other industry hasn't seen their sales increase since 1999? That's huge: 4,100 businesses in the city of Toronto who are licensees have a significant impact here, and they have a significant stake. Again, these are small, independent business owners. These are mom-and-pop shops. These are people who have everything invested and will lose everything in an industry which just has not recovered, and we cannot chance another tax.

**Mr. Tabuns:** I understand that this is your primary concern. You note you've written to the Premier. Can you give us sort of the headlines of the other concerns you have about this legislation?

**Mr. Mundell:** I think there's a variety of other concerns. The accountability issue is clearly one, how the city of Toronto becomes accountable for their dollars and the tax increases. The mayor's office and the structure in and around council and how it's structured is always an issue for us. That's something that needs some change and some review. You have a copy of the letter to the Premier that is there in our document for your reference.

**Mr. Duguid:** Mr. Mundell, thank you and your colleagues for being here today. You talked a fair bit about sustainability in your industry, and I think we're all sensitive to that. Your industry has taken a number of hits over the last decade or so. I would hope it's beginning to recover from some of those hits now, and hopefully we'll see some signs of that soon. But the city also has to be sustainable, and like your industry it competes with other cities and locations around the world for things like tourism. The city of Toronto has to compete with other cities its size around the world. I would hope that you recognize as well, notwithstanding the concerns you've expressed today, that it's very important that the city of Toronto have the tools it needs to compete with other cities its size around the world and that this act in fact gives it many of those opportunities.

**Mr. Mundell:** In a recent great cities of the world survey, one of the components that was brought out was restaurants and how they're a social fabric and a great part of the community and how they're the boardrooms of small business. We are a big piece of that sustainable city. We're a meeting place. We're a gathering place. That's where communities go. That's where families go. We're a big part of that social fabric.

The amount of money we're looking at here is less than 0.5 of 1% of the revenue source of the city of Toronto. For a group that's running on margins of 0.9 and 1.9, not back to 1999 sales figures, we need a sustainable industry to grow a sustainable Toronto, to invest, to expand our businesses, to expand the property tax base, to expand those other revenues the city has. We can contribute in other ways, and we do and we will. Give us the chance.

**The Chair:** Thank you very much for being here today. We appreciate your deputation.

## GREATER TORONTO HOME BUILDERS' ASSOCIATION

**The Chair:** Our next group before us is the Greater Toronto Home Builders' Association. Welcome, and as you get yourself settled, perhaps you could identify yourself, the organization you speak for, and anybody else who may speak today, for Hansard. Once you begin speaking, you'll have 15 minutes, and should you leave time at the end, we'll be able to ask you questions.

**Mr. Bob Finnigan:** Good afternoon, Madam Chair and members of the committee. My name is Bob Finnigan, and I'm the first vice-president of the Greater Toronto Home Builders' Association and senior vice-president of Heathwood Homes, which builds single-family homes and condominium townhomes in Toronto and throughout the GTA.

I'd also like to introduce my colleague Michael Moldenhauer, who's government relations chair of the GTHBA and president of Moldenhauer Developments, an infill builder in Oakville, Mississauga and Toronto. Michael will present the second half of the comments today.

We are both volunteer leaders in the association and appreciate the opportunity to speak with you today regarding the City of Toronto Act.

By way of background, the GTHBA has been the voice of the residential construction industry in the GTA since 1921, and we have more than 1,400 member companies. Based on our 2004 activity, GTHBA members represent 231,000 jobs and more than \$17 billion in GTA economic activity. Provincially, our industry represents 460,000 jobs, \$34 billion or 5.6% of Ontario's GDP.

The Greater Toronto Home Builders' Association joined with the Ontario Home Builders' Association and the Urban Development Institute of Ontario and submitted our Bill 53 recommendations to the Minister of Municipal Affairs and Housing, a copy of which you should have received. Our joint recommendations recognize the mutual and vital goal of ensuring Toronto remains a strong and vibrant world-class city to effectively compete in the global economy.

Bill 53, if enacted, will fundamentally change the dynamics of how we do business in the city of Toronto and could negatively impact housing affordability. We recognize the empowerment thrust of the legislation. However, we're of the opinion that not all the impacts to the economy and the residential construction business have been considered. There could be unintended negative consequences that the act, in its future regulations, may cause. We are here today to paint an overall picture of the economic impact of escalating costs and to address three specific items: the broad permissive authority, land transfer tax, and design provisions.

Specifically, we will highlight how these three items and others could add to the cost of projects, could cause delays in getting an affordable product to market and could decrease housing affordability. The result: a nega-



tive economic impact that will cost the city of Toronto and the GTA jobs.

1720

Last fall, we commissioned a study by economist Will Dunning called *Jobs in Jeopardy*. You should all have a copy. This illustrates the effect of increased land costs, development charges, and government policy and regulation. The study showed that with only a \$1,000 increase in the cost of a home, we lose 284 housing starts, 1,015 jobs, \$20 million in government revenue and \$2.2 million in future realty taxes.

We could already be feeling these effects. Just last month, new-home sales decreased by 25% compared to March 2005. The average asking price continues on its upward trend and land costs have increased 66% since 2002. There are limits to what people can afford.

Regarding the broad authority and permissive nature of the legislation, we are concerned on a number of fronts, especially because, as we understand it, this bill will likely be the basis for a new Municipal Act that will be rolled out to all larger municipalities in Ontario, giving them the same broad powers and authority. An argument could be made that the city of Toronto will take the broadest interpretation possible of the bill and its subsequent regulations.

To help illustrate this, we have an example. Within the GTA, there is a municipality that has asked builders to sign voluntary development levies without having the legal authority to do so. We are forced to sign if we want our application processed. This is just one example, and there are many examples of municipalities taking authority beyond the intent of the legislation, and we are concerned about the province's will and desire to curtail it.

How can the province anticipate and deal with issues when it is not aware of what is really happening at the municipal level? We urge you to understand the impact of provincial legislation and growth plans and do what is necessary to protect what is of provincial interest.

Again, our concern is the net result of such broad authority and the inevitable additional costs that will impact housing affordability.

In addition, we are concerned about the open-endedness of section 8. The powers are so broad that the city could possibly enact its own version of the Ontario building code. Obviously, we are of the opinion that the city should not be allowed to pass bylaws that would supersede and potentially conflict with the code. We submit that matters of provincial interest, as regulated through provincial legislation and associated regulations, should remain firmly in the control of the province.

If the city were to pursue a process in which the city would duplicate and/or frustrate provincial legislation, the land development and residential building industry would expect the province to invoke section 25 of the City of Toronto Act. Furthermore, we expect the province will implement a process to closely monitor the actions and bylaws of the city.

**Mr. Michael Moldenhauer:** Good afternoon. Regarding the possibility of a municipal land transfer tax,

I have been requested by our members to strongly urge the government to add municipal land transfer tax to the list of taxes that are prohibited to be charged by the city.

We are making this request for a number of reasons. The land development and homebuilding industry has seen unprecedented change with respect to provincial and municipal legislation, regulation and policy in the last few years. As a result, we have witnessed increased and increasing municipal planning fees, land costs, development charges, and other various charges and requirements that have contributed to higher home prices and reduced affordability for new home buyers.

Toronto has doubled its development charges, increased parkland dedication requirements, and increased development application review and approval fees by over 130%. The impacts of both Bill 51 and Bill 53 have the ability of increasing costs by up to \$50,000 per unit. If one applies this to Will Dunning's report that Bob referred to earlier, this could result in our looking at losing over 14,000 new home starts per year and over 50,000 jobs per year in the province, lost revenues to all three levels of government of over \$1 billion per annum, and specifically the loss of \$100 million in realty taxes each year.

The Ministry of Finance, for a number of years, has recognized the benefit of providing incentives for new home buyers and this has been applied technically through the land transfer tax rebate. This is demonstrated most recently in the bulletin in July 2005. We would suggest that our concern is that the ability to impact such land transfer tax would completely undermine that type of an environment.

The Greater Toronto Home Builders' Association, the Ontario Home Builders' Association and the Urban Development Institute support good urban design but cannot support architectural control. Through the powers granted in section 114 of the act, the city would be able to exert control over the exterior elements of buildings. Architectural appearance and exterior design are subjective matters that should not be legislated. We submit that that legislation is a blunt and, in this case, inappropriate tool to address complex urban design issues. The design provisions will change how we do business, cause undue delay and add another layer of process. We are here to tell you today that this will result in significant costs and the loss of jobs.

We submit that Toronto has sufficient authority over urban design matters through the existing site plan review and approvals process in the Planning Act. For example, it has become a common practice for developers to voluntarily host design charettes that engage the city and the local ratepayer/community groups in the site planning and urban design process before approvals are granted. We suggest that allowing approval authorities to dictate the type and colour of materials and sustainable design will, amongst other things, likely add considerable costs and threaten the economic feasibility of individual projects.

We want to remove the risk of design conditions being requested by the municipality too far into the process.



Design features could become a matter of taste, so a project could be rejected or delayed for purely subjective reasons. We recommend that the design sections be deleted from this bill.

The industry could, however, support a voluntary urban design review process in the city of Toronto, provided it is undertaken by an advisory panel composed of objective design professionals as well as building industry representation. We recommend that the projects that are especially innovative or provide even greater community benefit should be further rewarded through height and density bonus incentives to encourage high-quality design and materials.

In closing, we ask you to consider all 13 recommendations in our joint submission as you consider amendments to this bill. We strongly suggest that the government assess the economic impact of provincial legislation and do what is necessary to protect the provincial interest. The residential construction industry generates jobs and tax dollars for all three levels of government and, most importantly, builds the communities we call home. We want to continue to be an economic driver of Ontario's economy and offer Ontarians an affordable housing product while being a job creator.

Lastly, it is important for us to recognize that both Minister Caplan and Minister Gerretsen have worked extremely closely with our industry. We were quite appreciative of their ability to engage us in the dialogue of both of these bills that we have before us.

**The Chair:** You've left about a minute and a half, beginning with Mr. Tabuns.

**Mr. Tabuns:** Thank you for your presentation today. Could you speak to this question: You say that section 114, giving the city of Toronto the authority to set design or to approve design, will drive up costs. Can you tell me what that's based on?

**Mr. Moldenhauer:** It would be based on two factors. As practically and as quickly as I can, given the time constraints, if you could imagine that a project went to the Ontario Municipal Board for approval and the ruling from the Ontario Municipal Board resulted in an approval that was contrary to what the city had wanted, this particular mechanism in effect would give the city another opportunity to impose onerous conditions that could prevent that project from actually going forward. Clearly, with a broad slate as far as being able to regulate the types of materials that one could use, if it was not used in good faith, then that could have a serious impact.

**Mr. Tabuns:** The other question then is, do you know why the city has asked for this authority? I assume it's in there at the behest of the city; I don't think the legislation came about randomly.

**Ms. Lara Coombs:** It's actually in Bill 51 and Bill 53. I think the city was looking for some more ways to control what builders build, and they see this as a way to do it.

**The Chair:** Thank you. Are you Ms. Coombs?

**Ms. Coombs:** I am.

**The Chair:** Thank you—just for the purposes of Hansard.

**Mr. Duguid:** On page 5 of your presentation, you talk about the open-endedness of provisions in section 8 and the concern that the city could enact its own version of the building code. I'd like to get from you why you think that's the case. My understanding is that there is in fact an exception with regard to green roofs, that the city would have the ability to encourage the use of green roofs. Aside from that, as far as I can recall, there is no provision that allows the city to invoke its own building code. The provincial building code would remain supreme, and the city would not be able to change that. Correct me if I'm somehow misreading it.

1730

**Mr. Finnigan:** The indication we have on that is that there has been talk from the city. When asked specifically about building code provisions, they've said, "No, we're not giving up that right."

**Ms. Coombs:** Just to add, our legal opinion actually indicated that there is some wiggle room for the city to encroach on what would be considered provincial matters of interest, like provincial legislation. We wanted to bring it to your attention—we want to be overly cautious—that what is a provincial matter should stay a provincial matter.

**Mr. Duguid:** It would be very appreciated if you could share your legal opinion with us. You probably already have, but if you haven't already, share it with us just so we can have a look at it and make sure that the intent of the legislation is accomplished within the legislation.

**Ms. Coombs:** I'm happy to do that

**Mr. Duguid:** Do I have any more time?

**The Chair:** You have 30 seconds.

**Mr. Duguid:** Just quickly, my recollection of the provision with regard to architectural control is that it's not on a one-off basis where council gets to say, "We want pink windows," or something like that. It's through their official plan that they would put in architectural standards that might designate certain areas. I'm going to have to go back and reread that section after what you've said here today. But is that correct, that they do have control but the standards have to be set up front? Is that your understanding as well?

**Mr. Moldenhauer:** My understanding is it's not district-wide. It's not like a policy that they're looking to use, in effect, for a neighbourhood urban design mechanism. Clearly, it could be utilized within the context of one project at a time.

**Mr. Duguid:** We'll have to get that clarified for you.

**The Chair:** Mr. Hardeman?

**Mr. Hardeman:** Thank you for that last comment. We'll need to get that clarified, because my understanding was that in fact it is individual-application applicable. There's nothing in there that would suggest that it's restricted to the official plan document. So I think that needs to be clarified.

I really have a question—we've heard a lot of discussions about the land transfer tax, that that's going to cause a great problem and increase the price of housing.



But I haven't heard, and we didn't have the opportunity to get it from the minister, and maybe we could, Madam Chair, with your indulgence, ask the parliamentary assistant if he could comment on why the land transfer tax is not included in the list of what can't be done. It would seem to me that it's a provincial tax and it wouldn't even be applicable. But why is it not mentioned when there's so much concern about it?

**The Chair:** Are there no questions for this delegation?

**Mr. Hardeman:** No. It's actually to the parliamentary assistant.

**The Chair:** But are there no questions? I'll let this delegation go if your question is only to the parliamentary assistant.

**Mr. Hardeman:** Actually, the question is so the delegation can hear it, because one of their number one concerns is why that hasn't been excluded, and I would like to hear it from the—or maybe the government feels that it doesn't need to be excluded because they can't do it.

**Mr. Duguid:** I think the key to the consideration of revenue tools for the city of Toronto was to start off with a permissive approach. That was really the theme behind what we were trying to do. In doing that, there are certain areas that we felt that we wanted to ensure they were not, at this time at least, going to utilize. That would be income tax, sales tax—with the exception of tobacco, alcohol and entertainment—and I believe gas tax, and there was capital tax. There were a few things that we'd included that we exempted.

We wanted to leave it as open as possible so that the city of Toronto would have the same tools or similar tools that other cities its size internationally have. That doesn't mean they're going to utilize each and every one of these tools. We've heard no indication from the city that they're interested in the land transfer tax. Maybe they are; maybe they're not. We haven't had any indication that that's the case. But we want to leave it as permissive as possible so the city, in their due consideration and in full consultation with their community, can decide what's appropriate for the city of Toronto. We think they're in the best position to make those judgments.

**The Chair:** Thank you very much for being here today. We appreciate your coming out.

#### CHRIS SELLORS

**The Chair:** Our next delegation is Michael Walker, councillor of ward 22. I understand he's not here today, but his executive assistant is here with a presentation. Welcome. Can I get your name for the purposes of Hansard?

**Mr. Chris Sellors:** Chris Sellors, executive assistant to Councillor Michael Walker.

**The Chair:** I understand you have a DVD and a presentation. Is that right?

**Mr. Sellors:** Yes. I was told that I'm to give AV the signal. It's just going to be, if you see my written submission, just into the text.

**The Chair:** Okay. You understand that you have 15 minutes, and following your presentation, should there be time left over, we'll be able to ask you questions.

**Mr. Sellors:** Great. Thank you.

My name is Chris Sellors, and I am the executive assistant to Toronto city councillor Michael Walker, St. Paul's, which is in the centre of the city and incorporates part of midtown and north Toronto. I am here on the councillor's behalf as he is unable to appear before you today due to illness.

I would like to thank all the members for the opportunity to address this committee regarding this most important piece of legislation, the new City of Toronto Act. I will focus most of my comments upon the sections of the legislation concerning the governance of the city, how the regulations would radically change the way city council operates and how city council as a whole represents the wishes of the citizens of Toronto.

I would like to start with a video of former mayor David Crombie making a deputation to the mayor's policy and finance committee last November on the governance changes to city council as proposed in Bill 53, particularly the regulations in section 151. As you will gain from his deputation, this former mayor, one of the city's best, strongly recommends against the "strong mayor" model and the executive committee as proposed. Former mayor Crombie's comments echo Councillor Walker's sentiments as well as my own.

You can start the video now.

*Video presentation.*

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**Mr. Sellors:** Thank you. To continue, on April 4 David Crombie addressed the city again on this issue by appearing before community council. His comments were the same, imploring us not to employ this model. Former mayor John Sewell and many others have appeared before the city on this issue. Consistently, the public agrees that changes are needed to improve the efficiency of city council but not in this way. In the words of University of Western Ontario political science professor Andrew Sancton:

"This proposed version of the 'strong mayor' will not work—it is a mishmash of the administrations of some large American cities (such as New York or Chicago)—but it won't work. In order to work, the executive branch and the council branch need to be in separated spheres of control, otherwise the system does not have the proper checks and balances to provide transparency and accountability to the governed. The role of councillor would be diminished and power would be centralized in the mayor's office, thereby reducing the opportunity for local citizen input through their local councillor in the name of the city-wide plan of the mayor."

Professor Sancton was part of a ward-wide meeting Councillor Walker had with residents to discuss this proposal; 150 residents were in attendance, with all but one speaker against the "strong mayor" proposal.

In St. Paul's, the area Councillor Walker represents, the municipal election vote result for the current mayor



was barely 2% more than the runner-up, which does not give a clear mandate of support for the platform of the current mayor, whereas the municipal election vote result for Councillor Walker was 83% in favour of his re-election. Under this governance model, in section 151, the people of St. Paul's would see a reduced role for their representative at city hall, for whom they voted with such majority and trust. This is counterintuitive to the thinking of many residents of St. Paul's, who are some of the best-educated electors in the country.

Democracy is expensive. Democracy is hard to control, is unpredictable and messy. Well, if we want to ultimately streamline decision-making and run our city without the appropriate input from our residents, then we should choose the big vision over the local perspective. Then we would be choosing the "strong mayor" model. This model's ways of empowering the mayor and disempowering council are insulting to the citizens of Toronto, who have been crying out in the last 10 years—especially the last 10 years—for an increased level of meaningful public consultation on all issues, big and small. This governance model is not what our residents asked for, and there has not been enough consultation to tell what our residents want.

All through Bill 53 there are instances where the minister can usurp the power of the city and impose measures not requested by the city. In this way, Bill 53 is only a smoke-and-mirrors fulfillment of the basic touchstones of autonomy for a would-be mature level of government. The autonomy of the city of Toronto is at stake here. When the discussion around the City of Toronto Act began in 2003, the city consistently voiced its need to rule its own house by making its own decisions, with the ability to collect and spend revenue as it needs to. Bill 53 seems to do this, but it does not.

I should say, there are parts of this proposed legislation that, with refinement, will be improvements to city council's control over its own. Some of the positive elements in this legislation are:

(1) The power to create our own binding lobbyist registry, section 164. Thank you. We've been waiting. The city passed a draft bylaw for its own lobbyist registry in 2003 after a motion by Councillor Walker in January of 2002. It was actually seconded by the mayor, then a councillor at that time. Thank you for finally giving the city the power to observe lobbyist activity with the same scrutiny as the provincial and federal governments.

(2) The power to create corporations under the management of the city of Toronto. This will be useful for the sustainability of our cultural attractions, like Casa Loma, for example, which need the power to raise funds on an ongoing and sustainable basis.

(3) Land use planning, section 111, the power to prohibit and regulate the demolition and conversion of rental housing units. This has been requested for years because we are quickly losing our stock of affordable rental housing in Toronto. Thank you for that one, too.

(4) Land use planning, section 114, subsection (6), paragraph 3—site plan control. Increased power over the

site plan of a proposed development is needed, although, in paragraph 3, the act excludes the city from controlling "the manner of construction and construction standards." The city should have the power to control the manner of construction in order to protect the quality of life of its citizens. For example, if the city had this power when the Minto development—you've all heard of that—at Yonge and Eglinton started, it may have been possible to stop the strong vibrations caused by excavation that negatively affected businesses and residents, damaged property and caused great discomfort to our residents.

(5) Land use planning, section 115—appeals of minor variance applications will now be heard by an appointed citizen-member panel, arm's length from city council. This is in the right direction. This will increase the city's control, but the legislation makes no mention of the funding for this new body. Effectively, this cost will be downloaded to the city. Another problem with this scheme is the fact that minor variances are heard by an appointed citizen-member panel in the first place, currently. How would another citizen-member appeal body have the authority to overturn the first decision made by a citizen-member body? City council or community council should be the body that hears appeals of minor variance applications. With some refinement, these aspects of the legislation will aid the city.

To return to my main points, the "strong mayor" proposal contained in Bill 53 is wrong for Toronto, and the power of the minister to impose this system on the city should be removed. The city should be given the power to choose its governance model and not forced into something it did not ask for. A strong city is a supremely democratic city, and parts of this bill will reduce the level of democracy.

Thank you for your attention.

**The Chair:** You've left nine seconds. Thank you very much for being here today.

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## ONTARIO HOME BUILDERS' ASSOCIATION

**The Chair:** Our next delegation is the Ontario Home Builders' Association. Welcome. If you're both going to speak, identify yourselves and the organization you speak for before you begin. When you do begin, you will have 15 minutes. If you leave some time, we'll be able to ask you some questions. I believe we have your presentation here.

**Mr. Victor Fiume:** Thank you. Madam Chair, members of the committee, good afternoon; actually, it's close to good evening. My name is Victor Fiume, and I have with me Michael Collins-Williams, from the Ontario Home Builders' Association. I am the president of that association. I've also served as president of the Durham Region Home Builders' Association, and I'm an observer member on the board of directors at the Tarion Warranty Corp. I've been involved in the residential construction industry for two decades, and I'm the general manager of



the Durham Group. I am a volunteer member in this association, and I appreciate the opportunity to speak with you here today and to deliver an important message from the residential construction industry.

The Ontario Home Builders' Association is the voice of the residential construction industry in the province. Our association includes 4,000 member companies organized into 31 local associations across the province that are involved in all aspects of the industry. Our industry represents over 5% of the provincial GDP and contributed approximately \$34 billion to the provincial economy last year.

OHBA would appreciate your consideration with respect to a number of concerns with the proposed Stronger City of Toronto for a Stronger Ontario Act. OHBA does not believe that the government has given serious consideration to potential economic and business consequences that may arise from Bill 53.

The Ontario Home Builders' Association has joined with the Greater Toronto Home Builders' Association and the Urban Development Institute to present key recommendations to the provincial government on this piece of legislation. About half an hour ago you heard a number of recommendations from my colleagues Michael Moldenhauer and Bob Finnigan, representing the Greater Toronto Home Builders' Association. I'm going to pick up where they left off and speak to a couple of issues that may have unintended negative consequences for the residential construction industry. Our joint recommendations are offered to you with the understanding that the province, the city of Toronto and our industry share the same goal: enabling Toronto to remain a strong and vibrant world-class city able to effectively compete in the global economy.

Our first recommendation is that home builders be exempted from business licensing in Toronto because we are already licensed through the Tarion Warranty Corp. To frame this recommendation, I will provide you with a brief background on the Tarion Warranty Corp. and their involvement with the licensing and regulation of the home building industry in Ontario.

In 1976, the Ontario Ministry of Consumer and Commercial Relations established the Housing and Urban Development Association of Canada warranty program—commonly referred to as HUDAC—subsequently renamed the Ontario New Home Warranty Program, and in 2004 re-branded as the Tarion Warranty Corp. Tarion is the licensing and regulatory body mandated to administer the residential construction industry in Ontario. Tarion guarantees the statutory warranty rights of new homebuyers and regulates new home builders under the Ontario New Home Warranties Plan Act. As the regulator of Ontario's new home building industry, Tarion registers new home builders and vendors, enrolls new homes for warranty coverage, investigates illegal building practices, resolves many warranty disputes between builders and homeowners, and establishes customer service standards and construction performance guidelines for the industry.

Tarion is not dependent on government funding as it is financed entirely by builder registration renewals and home enrolment fees. Tarion is an unparalleled success, as confirmed by the 1.3 million homes enrolled in the program to date. By law, every builder working in Ontario must register and enrol all the new homes they build. In situations where a builder does not meet the established standards, Tarion has the authority to both step in and resolve the issue and to deregister or take legal action against the offending company. Tarion is in the best position to provide the necessary protection to both consumers and builders, and to set the standards by which the homebuilding industry must abide. Furthermore, it is our submission that as Tarion is successfully discharging its mandated functions, further duplication of licensing for home builders by the city is redundant and unwarranted.

As the Tarion Warranty Corp. currently governs and licenses new homebuilders in the province, we recommend that the Minister of Municipal Affairs and Housing pass a regulation under section 119(1)(a) to exempt homebuilders from being subject to business licensing by the city of Toronto.

The second issue I would like to briefly discuss is zoning with conditions. The province's intention for Bill 51 is to enable municipalities to address specific physical aspects of community building. Since Toronto's authority to apply conditions on zoning resides in Bill 53, it is unclear whether the intention is the same with respect to Toronto versus what is contemplated for other municipalities in Bill 51. This ambiguity leaves us very concerned that Toronto anticipates requiring social infrastructure through the development approvals process.

We are opposed to the use of conditions on zoning for these purposes, particularly in light of the significant number of eligible items the industry pays for under the Development Charges Act. We submit that legislation governing the planning process is an inappropriate vehicle for Toronto to pursue social policy objectives. New home buyers should not bear the responsibility of funding redistributive social programs. These costs should be borne by all taxpayers.

GTHBA, OHBA and UDI submit that imposing conditions through zoning has the potential to make projects economically unfeasible, particularly if the city views this as a solution for a myriad of problems, whether fiscal or social in nature. The industry would, however, consider supporting the city being given the authority to impose conditions on zoning to obtain specified community benefits, in exchange for the provision of specific bonuses to the applicant, such as increased height or density, credits on parkland dedications, cash in lieu of parkland conveyance, or development charges.

Therefore, we recommend that the province amend section 113(2) of the bill to enable the city to impose conditions on zoning to obtain specified community benefits, in exchange for bonuses or credits to the builder or developer. We also recommend that section 113(2) of the bill not be proclaimed until such time as the draft



regulation is released and the public and stakeholders are afforded a reasonable opportunity to review and provide input.

The third and final item I would like to briefly discuss today is section 108 of Bill 53, governing the construction of green roofs. The industry is supportive of energy efficiency and conservation; however, the industry will want to ensure certainty and consistency in standards across all Ontario jurisdictions. New building and construction standards fall under the provisions of the Building Code Act. We are concerned that municipal bylaws mandating new construction standards could be in conflict with the provincial interest. Furthermore, we are concerned that there is a potential for a number of varying construction standards across different jurisdictions in Ontario. We urge the province to maintain uniform building and construction standards.

Presently there exists a well-established, fair and balanced process, facilitated by the Ministry of Municipal Affairs and Housing, through which the stakeholders regularly review and provide input respecting building code revisions. New building and construction standards such as green roofs should be addressed through this same process. Additional building and construction standards or policies mandated by municipalities would circumvent the established provincial process.

The Ministry of Municipal Affairs and Housing is currently consulting on proposed energy conservation options for the Ontario building code, including the use of green technologies and roofs. New regulations must consider all of the potential impacts. Therefore, we strongly believe that it is in the provincial interest to maintain control over all aspects of Ontario's construction standards to ensure consistency across the province. The Ontario Building Code Act should prevail over any municipal bylaw governing or regulating construction standards or policies.

Therefore, we recommend that section 108, authorizing the city of Toronto to pass a bylaw requiring and governing the construction of green roofs, be deleted in its entirety.

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In conclusion OHBA, GTHBA and UDI support a fiscally sustainable city of Toronto to achieve a vibrant, strong, economically competitive provincial capital. However, from the industry's perspective, Bill 53, if enacted as currently drafted, has the potential to block intensification and urban renewal, thus hindering a number of the province's stated key objectives. Bill 53 will cause unnecessary delays and increased costs to an already lengthy and over-regulated process.

In closing, I would like to reiterate that as the engine that drives the provincial economy, the residential construction industry pours billions of dollars into municipal, provincial and federal coffers. It is in the best interest of all Ontarians that the provincial government work with us to ensure that the new housing and renovation industries continue to thrive.

Madam Chair, members of the committee, I would like to thank you for your attention and interest in my presentation and I look forward to hearing any comments or questions you may have.

**The Chair:** You've left about a minute and a half for each party to ask a question.

**Mr. Duguid:** Mr. Fiume, thank you very much for joining us here today. Two quick questions, and not a lot of time. You're asking for an exemption for home-builders with regard to being subject to business licensing by the city. Has the city given any indication now or in the past that they're interested in that kind of provision?

**Mr. Fiume:** I guess when they were asked point blank, they didn't say, "No, we have no interest in doing this." So in an abundance of caution, this does concern us deeply.

**Mr. Duguid:** They haven't indicated they're interested in it but they haven't said that they're not either, so it's sort of out there.

**Mr. Fiume:** Yes.

**Mr. Duguid:** Second, you're concerned about the construction of green roofs. In your deputation, it looked like you were referring to other aspects of the building code as well, but then you focused on the green roofs. I'm aware of the exemption for green roofs, in terms of giving the city some greater authority with regard to the building code on the green roof aspect. I'm not aware of others. Is there anything else in the legislation that you're concerned about that would have Toronto have a different building code standard than anywhere else in the province?

**Mr. Fiume:** Certainly we would like some clarification. I think there are a couple of different frames of mind there. Listening to the comments of the previous speaker, it was abundantly clear that they would like to proceed with changes to the building code, strictly for the city of Toronto. Apparently, in one person's opinion, the EA for Michael Walker, this is on their minds.

**Mr. Duguid:** It may be on their mind, but as far as I know it's not in the legislation. We can certainly clarify that for you to set you at ease.

**Mr. Fiume:** Thank you.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation. As all the other people in the building industry have pointed out to us, the changes being proposed, particularly the one that has been mentioned the most, the land transfer tax, but also the other issue you mentioned, the licensing fee, are going to increase the cost of housing. I think we all recognize that if there's an extra cost, it's going to be a pass-through cost. The government has made it clear that it's a way for the city to raise more money to cover their operating costs.

I found it interesting that when it comes to the warranty program, the licensing process, your industry is saying, "We don't need to do that because we're already governed on that." That's making the assumption that all these other charges are somehow related to services rendered as opposed to a place to find more revenues.



I just point out my concern in the bill. I support a stronger City of Toronto Act in some form, but my concern is that as we talk about which of these extra revenues shouldn't be imposed, the list of those that will or could be imposed keeps getting smaller. I think that for those that the city is not talking about today, when the need arises, there's a risk that they will change their minds. It is very important that you come forward and point these out and that the government listens to that and then puts things in place—not "We will stop them if they do it," but "No, they can't do it to start with," so they would be looking in other places to start with.

I very much appreciate your presentation. I hope everyone is listening and that appropriate amendments can be made to make the bill better for the whole industry. Thank you very much for your presentation.

**The Chair:** Mr. Tabuns.

**Mr. Tabuns:** Thank you for your presentation. This bill to some extent is meant to give the city of Toronto options for dealing with the structural financial crisis that it finds itself in. You've made it very clear that you don't like a number of the options that have been presented to the city. Does your organization support the return of those downloaded expenses that the province put on the city of Toronto and other cities to the province of Ontario itself?

**Mr. Fiume:** As they relate to social programs, absolutely.

**Mr. Tabuns:** And to transit?

**Mr. Fiume:** And for transit as well, absolutely, yes.

**Mr. Tabuns:** Do you see any issues with this bill outside the building code issues, the land transfer tax? Do you have concern about governance etc.?

**Mr. Fiume:** Certainly there's concern about governance. I don't know that we've had a full-fledged discussion. I think that's pretty much been taken off the table at this point. But I think with increased powers comes increased responsibility. We would welcome that discussion and would love to take part in that discussion. Municipally, politicians are elected every three years. I guess right now the accountability is every three years. I say to you that a lot of damage could be done in three years.

**Mr. Tabuns:** How would you suggest correcting the problem between elections?

**The Chair:** You've got 10 seconds to answer that.

**Mr. Fiume:** Tightening up the legislation and ensuring that the amendments are properly worded is really a good start. I think it's important that the city of Toronto realizes that the intent of the legislation is not as a tax grab but is to fund the stability of the city.

**The Chair:** Thank you for being here today.

#### GREATER TORONTO HOTEL ASSOCIATION

**The Chair:** Our last delegation today is the Greater Toronto Hotel Association, Mr. Rod Seiling. Welcome. We've saved the best for last, I'm sure. Please introduce

yourself and the organization you speak for, and then you'll have 15 minutes.

**Mr. Rod Seiling:** Good evening, Madam Chair and members of the committee. Thank you. My name is Rod Seiling and I'm president of the Greater Toronto Hotel Association, the voice of Toronto's hotel industry. The Greater Toronto Hotel Association represents over 160 hotels, with approximately 34,000 guestrooms and more than 32,000 full-time jobs. Founded in 1925, the GTHA enables competing hotels to work together on issues of public policy and charitable ventures, provides information and service to its members and advocates to raise their profile and prosperity as a vital component of Toronto's tourism industry.

Bill 53 indeed does provide the city of Toronto with new powers. Undoubtedly you will hear from both sides advocating that it is either too much too soon or, conversely, not enough in terms of the provision of new powers.

The GTHA believes that power, much the same as respect, is to be earned and that while there are aspects of this bill that give us some concern, we would state that with a required component as it relates to the governance issue, it is something that our members can more than likely live with.

Governance: The GTHA's support for any incremental powers for the city has been premised on a stronger and more accountable governance system in place preceding the turnover of any new powers. We strongly believe this is a quid pro quo and that this balance must be functioning, as some of the powers from a city perspective, we suggest, relate directly to revenues.

Toronto's hotel industry, I suggest, is a good case study to examine our assertion. The city's ongoing destructive policies to its business class has been a classic case of governance gone off the rails. For example, the accommodation industry in Toronto is already the highest-taxed business group in the city of Toronto, the province of Ontario, Canada and North America. For much too long, the city has chosen to follow this high-tax policy to the detriment of hoteliers and, for that matter, other businesses across the city. The net cost to the city has been millions of dollars in lost property tax revenues, jobs and new investment.

From the province's standpoint, the losses are not as significant, as some of that lost investment was made in the surrounding 905 area where the property tax per room of about \$1,700 annually versus about \$8,000 in the city literally drove investment decisions.

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Other investors moved their money into foreign jurisdictions where they could earn the returns that are expected in our business. For well over 10 years we did not have a new hotel build of any account in Toronto despite an acknowledged need, nor do we have a five-star hotel, despite this being the home of Four Seasons Hotels.

Only recently have we seen announcements for new hotel builds, and they are being made possible by com-



binning them with a condominium component. Without the condo subsidization, the business case for the hotel disappears. Unfortunately, we still do not see any hope on the horizon for a 800- to 1,000-room convention hotel, which the destination sorely needs. The city's 15-year business tax reduction program acknowledges the problem, but by allowing the city to break Bill 53's hard cap, hotels may never see the reductions that they are being denied by the capping and clawback regimen and will likely see higher taxes.

You, the province, can help in this regard. That comes in the form providing Toronto with the education tax relief it deserves and mandating that it be directed to reducing business taxes so as to bring them in line with the 905 region.

We therefore support the province retaining regulatory powers over the city to impose a governance model on it. Either the model proposed by the Toronto Board of Trade or the city's own review panel would suffice. Our condition is that it must precede the turnover of powers proposed in Bill 53.

We believe that whatever model, the legislation should outline the mayor's financial role and responsibilities, and delineate the city manager's role and responsibilities.

Checks and balances: Checks and balances are key to any successful governance system and we believe are crucial as they relate to Bill 53. First and foremost, of course, is the governance reform itself. We also support the enhanced accountability and transparency provisions contained in Bill 53. We also support the province undertaking regular reviews of the legislation, which should include a public consultation process. We would also suggest additional measures to improve the accountability measures and provide a stronger balance to the new measures. They are as follows:

- broaden the Auditor General's scope to cover all municipal operations and ensure adequate funding;

- ensure that the city's code of conduct applies to civil servants, political staff and members of local boards, not just to councillors;

- ensure that the Integrity Commissioner has broader powers and can hold civil servants, political staff and members of boards to the code of conduct, as well as councillors; and

- stipulate that the positions of integrity commissioner, auditor general and ombudsman are full-time positions.

Finances: Bill 53 does not alleviate the city's ongoing fiscal gap at this point, and we want to congratulate the government. Simply providing the city with more funds does fix what we believe may actually be a spending problem. For example, the city, during the first two years of this council's term, has approved \$700 million in new annual spending. At the same time, it received over \$300 million for 2006 last year from both the provincial and federal governments. At the same time, it refuses to consider alternate service delivery as a way to both improve service and control costs, and seems to be ever so slow on the uptake of zero-based budgeting.

We are supportive of Bill 53's provisions as they relate to the use of tax increment financing and the province's maintaining the power to limit the city's revenue generation powers by regulation. With respect to the latter, we would be remiss not to support Bill 53's specific prohibition on the ability of the city to levy a hotel room tax. This measure recognizes the best-in-practice destination marketing fee that the hotels have instituted and guarantees that the funds are dedicated to destination marketing.

The tourism industry is facing many challenges. Governments are underfunding their share of the marketing function, all while it is coping with the lingering impacts of 9/11, SARS, the rapid appreciation of the dollar, gas pricing, border issues and the soon-to-be-implemented western hemisphere travel initiative.

Our industry struggles to receive its fair due. It is larger than fishing, farming and mining combined, but from a public policy perspective, this fact is sometimes hard to discern. This prohibition says in a very meaningful and tangible way that the interests of the industry and the hundreds of thousands who work in it are important and that the very foundation of the industry, its marketing source of funding, is safe and secure.

We do have some concerns as they relate to taxing powers transferred to the city under Bill 53. They are the taxing powers related to alcohol and entertainment. Both are already taxed, and any additional levies may make the activity and/or event too expensive from a competitive standpoint and/or put the owner either out of business or cut the ROI to such an extent that the business activity is non-competitive. Worse still would be the fallout from a perception that Toronto is too expensive. This statement is not mere supposition, as this province already struggles with this concern because of the high taxes on products vis-à-vis other competing destinations.

We do have additional recommendations that we believe will assist in meeting the objectives of Bill 53. They are as follows:

- outline business property tax rate increase limits;

- require the city to report publicly on efficiencies, effectiveness on program objectives, and results on all services; and

- when fiscally prudent, that the province upload downloaded costs such as social programs.

Powers: As we have indicated earlier, the power transfer contemplated in Bill 53 must be preceded by the implementation in the governance structure of the city. It is the balance for the new system.

We also suggest the following changes:

- reduce the ability to which quasi-judicial and legislative decision-making can be delegated by council to other groups or individuals;

- increase the checks and balances on the proposed new licensing powers; and

- strengthen the planning system prior to allowing a local planning appeals tribunal.



**Conclusion:** In general, the GTHA is supportive of the general direction in which Bill 53 is taking the relationship between this province, the city and the taxpayers. It is important to remember that, in the end, there is only one taxpayer. In that regard, as the relationship evolves, the respect and the responsibility that the city is looking for is something that must be earned, and it is the responsibility of the province to ensure that those that generate the economic prosperity that all the stakeholders depend and rely upon are better off from Bill 53, not just more highly taxed and regulated.

Thank you very much.

**The Chair:** You've left about two minutes for each party to ask a question, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. I agree that it's great that hotel rooms are exempt from the taxation, recognizing that of course that's because they already have a similar tax but actually being used for the purpose it's collected for, which is to promote the use of the hotel rooms. Do you have any concerns with the fact that the taxes on alcohol and cigarettes and entertainment aren't directed to anything else? In fact, there's no need to account for value at all. It's just a place where the city can tax. I wonder if you'd have any comments on that, whether it would be better if that was directed the same way, recognizing that a lot of money is spent in that area.

**Mr. Seiling:** Thank you for the question. First of all, the destination marketing fee is a fee; only governments can tax. All the money we collect is turned over for the benefit of the tourism industry. We are only the collection body. It goes to Tourism Toronto. So it's for the industry. It's not for hotel rooms, not for hotel owners.

In regard to the meat of your question, we are hopeful, and the signals we are receiving from the city is that they understand the issue at hand and they won't put something on impulsively and put us at a competitive disadvantage. We're very fortunate that very recently the Minister of Finance reduced some of the taxes on alcohol, which puts us back in a bit of a competitive position, but the returns on the food and beverage industry are in the range of—profit margins for that end of the business are from one half of 1% to 1.5% max. They're very low returns. To put anyone at a competitive disadvantage—the tipping point is so minute, anything can hurt. So obviously we're concerned, but we're very hopeful that the city will show the leadership and maturity that it says that it wants in this area. This will be a good test.

**Mr. Hardeman:** So you're suggesting that you don't expect the city to levy the alcohol and cigarette taxes?

**Mr. Seiling:** Well, we're hopeful that the city will take—I wasn't here, but I understand the mayor earlier today made that statement. I don't know whether it was at this committee or outside the room, but as I said, I'm hopeful that they'll look very carefully before they do anything to put the industry at a competitive disadvantage.

**The Chair:** Can I ask what "ROI" means?

**Mr. Seiling:** Return on investment.

**The Chair:** Thank you. Mr. Tabuns?

**Mr. Tabuns:** I note the question is ongoing with everyone who has appeared here around where the money will come from to make the city operate. I just want to be very clear: Your organization supports the return of social service costs and transit costs to the province from the city so that the city can balance its books. Is that correct?

**Mr. Seiling:** We've said—and I think the province has acknowledged that when the fiscal room is available, they're prepared to do it. You can't do something you don't have the money for, and everyone is hard-pressed for money. As we said, there's only one taxpayer here, so it's really how you divide the pie. There aren't new revenues from new people, other than the ability to have a competitive environment where you get new investment, and new economic activity will generate the ability to generate new tax revenues.

**Mr. Tabuns:** Is that a yes or a no?

**Mr. Seiling:** I think I answered. We've said that when the money's available, we'll support the uploading of those services.

**Mr. Duguid:** There's something I want to get on the record with Mr. Seiling here. When we were going through a very difficult time after the SARS and probably other market forces as well, Toronto's tourism industry was impacted, and we have not been investing like other jurisdictions have in that area. I want to thank Mr. Seiling and his association for the leadership they've shown in that unique destination marketing fee approach. It's been hugely successful. You'll note that the provision to not allow a hotel tax really runs counter to the permissive approach we've taken in the legislation, but we've done that because we recognize the leadership shown by the industry, and we want to make sure that that leadership—which is not only in Toronto; it stretches outside of Toronto, through the greater Toronto area—can be preserved. I want to thank you for that. I know M. Lalonde has a question.

**Mr. Seiling:** If I could, I wanted to thank the government formally. As I said, it is best practice, and other jurisdictions across the province are, as you know, using the same model now.

**Mr. Lalonde:** I have two questions, if time permits. On page 2, the second-last paragraph, you referred to the 905 area, where the property tax per room is about \$1,700 versus \$8,000. What did you refer that to?

**Mr. Seiling:** What I'm saying is that the tax per room per year on a comparable hotel room in Mississauga, for example, runs about \$1,700. The tax per room on that equivalent hotel room in the city of Toronto, downtown, is about \$8,000. It's a huge disparity. It's a function of a number of things: one is the education tax, but the other is just property tax rates. The city of Toronto tax rates are double and triple what they are in other areas. It's an area that the city is continually hit on. The effective tax rate on hotels in the city of Toronto, partly because of the cap in clawbacks and the tax rate, is 6%, as I said, the highest not only in Ontario but in Canada and North America.



**Mr. Lalonde:** My second question: I know you're on the commercial side, but would you compare the residential tax rate in Toronto versus the 905 and the city of Ottawa, for example, as about the same level?

**Mr. Seiling:** No. I think the tax rate on the city of Toronto residences is one of the lowest in the province. I don't have that information with me—I could provide it for you—but it's a function of the fact that residents vote and businesses don't. I referred to destructive tax policies. It's unfortunate that that policy is driving business out of the city. We're hopeful that—as I've said, the 15-year plan that the city passed recognizes it, but it may be locking the barn door after the horse is gone, because the business has already left.

**The Chair:** Thank you, Mr. Seiling. We appreciate your being here today.

**Mr. Seiling:** Thank you very much.

**The Chair:** I'd like to thank all of our witnesses, members and the committee staff for their participation in the hearings. I'd also like to remind subcommittee members that a short meeting to discuss how to accommodate additional witnesses has been requested, following the adjournment of this meeting. Could those members please stay for a few minutes?

This committee now stands adjourned until 4 p.m. on Monday, May 1, 2006.

*The committee adjourned at 1824.*

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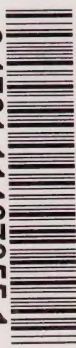












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